NO. 14-17-00932-CR

IN THE COURT OF APPEALS
FOR THE
FOURTEENTH SUPREME JUDICIAL DISTRICT OF TEXAS
AT HOUSTON

SANDRA JEAN MELGAR,
Appellant

VS.

THE STATE OF TEXAS,
Appellee

Appeal in Cause Number 1435566
In the 178th District Court
of Harris County, Texas

BRIEF FOR APPELLANT

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[APPELLANT REQUESTS ORAL ARGUMENT]

NAMES OF ALL PARTIES

JUDGE:	Honorable Kelli Johnson 178th District Court Harris County, Texas
PROSECUTORS:	Colleen Barnett Harris County District Attorney's Office 1201 Franklin, Suite 700 Houston, Texas 77002
DEFENSE ATTORNEY:	George McCall Secrest, Jr. (Trial & Appeal) Bennett & Secrest, PLLC 1545 Heights Blvd., Suite 800 Houston, Texas 77008
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STATEMENT OF THE CASE

This is an appeal from a conviction of the offense of murder, proscribed by TEX. PEN. CODE Section 19.02 (b)(1) and (2). The appellant, SANDRA JEAN MELGAR, was charged by grand jury indictment on July 21, 2014.[1] (CR – 11). Trial commenced on August 8, 2017, before the Honorable Kelli Johnson, Presiding Judge of the 178th Judicial District Court, and on August 23, 2017, the jury returned a

[1]The indictment was returned over eighteen (18) months after the death of her husband.

verdict of "guilty." (RR 1 – 1-12; CR – 185). On August 24, 2017, the sentencing phase was conducted resulting in the jury assessing punishment at confinement in the institutional division of the Texas Department of Criminal Justice for a term of twenty-seven (27) years and a fine in the amount of $10,000.00. (CR – 438-439).

A Motion for New Trial was timely filed on September 25, 2017. (CR – 453)[2]. It was timely presented to the District Court on September 28, 2017. (CR – 541)[3]. On October 24, 2017, an evidentiary hearing was conducted on the motion. (RR 16). On November 6, 2017, the trial court denied the same. (CR – 637). Timely notice of appeal was filed on November 15, 2017. (CR – 637).[4]

REQUEST FOR ORAL ARGUMENT

Oral argument would substantially assist the Court in resolving the issues brought forward on appeal. The legal sufficiency of the evidence is raised in this incredibly weak and highly circumstantial evidence case. The investigation conducted by law enforcement into the murder of the complainant was sloppy and

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[2]*See* T.R.A.P. 4.1(a) and 21.4(a).

[3]T.R.A.P. 21.6.

[4]T.R.A.P. 26.2(a)(2).

anything but objective and impartial. Not only did the prosecution urge the jury to find the defendant guilty based on sheer speculation and innuendo, the verdict herein was not predicated on reasonable inferences supported by the evidence presented at trial. The "rigorous and proper" application of the *Jackson vs. Virginia* legal sufficiency of the evidence standard is a "highly individualized inquiry" and is "as exacting a standard as any factual–sufficiency standard", a standard that was not met in this case. Due to the record's length and complexity, oral argument would be invaluable to the Court in resolving the significant issues raised herein.

POINTS OF ERROR

POINT OF ERROR NUMBER ONE: The evidence is legally insufficient as a matter of law in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

POINT OF ERROR NUMBER TWO: The jury engaged in misconduct and received other evidence after retiring to deliberate thereby denying the defendant a fair and impartial trial.

STATEMENT OF FACTS

I. Introduction

On December 23, 2012, Herman Melgar (the brother of the deceased, Jaime Melgar), Herman's wife, Maria, and their family, arrived at the residence of Sandra

"Sandy" and Jaime Melgar for dinner, but no one answered the door. Herman finally entered the house through an open garage door and the unlocked interior door of the garage and then let his family in through the front door.

After announcing their presence, "Sandy", the defendant herein, was heard yelling for help from inside the master bathroom closet. A chair was pushed up against the closet door, wedged underneath the doorknob. Herman had to move it in order to open the door. He found Sandy lying on the floor with her arms tightly bound behind her back and her ankles tied. Herman and Maria tried to untie Sandy but she was bound so tightly that they had to cut the bindings off with scissors.

Sandy was crying, and immediately asked about Jaime; thereafter she found him dead in their bedroom closet. She collapsed by his side, crying hysterically. An autopsy revealed Jaime sustained over fifty (50) blunt force and sharp force injuries, including a fractured skull. While Maria comforted Sandy, EMS and law enforcement arrived. Although Sandy thought help had arrived, from the very get-go, she became the immediate and sole suspect. Despite losing her husband and soul mate, and having been the victim of an assault herself, little did Sandy know that her nightmare had only just begun.

The EMS responder's testimony and report reflected that Sandy was "crying hysterically", "in shock", "inconsolable", "visibly extremely upset", "unaware of events", and "had no sense of time". Sandy's medical history included seizures, lupus, rheumatoid arthritis, and bilateral hip replacements. Sandy's "Chief Complaint" was documented in EMS records as "aura of a seizure." Sandy repeatedly informed responders she thought she was going to have a seizure, had a headache, and believed she had had a seizure because when she woke up in the closet, her head hurt, she had joint pain, and she could not remember all the previous night's events.

She was taken to the Homicide Bureau and cooperated with the detectives. It became readily apparent early on, however, that this was no interview, but rather an interrogation. Sandy told the detectives what she could recall from the previous evening but that she suffered from seizures which caused her to have memory problems. She explained that she was sore and her head hurt, but she did not know if she had been hit on the head, had fallen and struck her head, or if she had had a seizure. A medical examination by a physician three days later established the presence of a lump on Sandy's head, and bruising on her eye and arms.

The detectives repeatedly questioned Sandy about the open garage door. Although it explained how the intruder(s) entered the house, it was inconsistent with the detectives' already decided theory: this murder had to be an "inside job" because

there was no "forced entry" through windows or doors and Sandy had not been murdered. Law enforcement officials began this investigation with a false premise which infected the entire investigation. The evidence irrefutably establishes that the detectives were disengaged and disinterested, jumped to conclusions, and failed to follow leads that possibly could have led to the apprehension of the real killer(s). Although they professed to being objective and thorough, nothing could have been further from the truth.

II. No one answers the door at the Melgar residence when the family arrives for dinner.

A. Herman enters the residence through the open garage door and an unlocked interior door at the back of the garage

Herman Melgar, the deceased's brother, was called as a witness by the *defense*.[5] Herman was very close to Jaime, who was not violent or aggressive. (RR 9 – 145). He believed Sandy was a good, honest, non-aggressive and non-violent person. (RR 9 – 146). Jaime and Sandy had a very good relationship, without marital discord, abuse, or financial problems; they thought the world of each other. (RR 9 –

[5]Notwithstanding he (1) was Jaime's brother, (2) knew about Jaime and Sandy's relationship, (3) was the first person to enter the residence after Jaime's murder through the open garage door and unlocked interior door to the house, (4) heard Sandy screaming, (5) removed the chair that had been wedged underneath the master bathroom exterior closet doorknob, (6) found Sandy in the closet tied up so tightly he had to cut her out of her bindings, (7) observed her panicked and hysterical, and (8) was interviewed by investigators at the scene and fully cooperated with them, inexplicably, law enforcement officers never questioned him again, and the prosecutor never spoke with him, did not call him as a witness, and asked him no questions on cross-examination.

146-147). He was aware of Sandy's epilepsy and need of a cane; these issues went back 20 years. *Id.*

On December 23, 2012, Herman, Maria, and family, arrived at Jaime and Sandy's residence at approximately 3:30 p.m. to 4:30 p.m. for dinner. (RR 6 – 148-149). They noticed the garage door was open; no one answered the door when they knocked or responded to their cell phone calls but they could hear dogs barking inside. (RR 9 – 149-150). Herman went around to the backyard to see if he could rouse Jaime and Sandy; he entered the backyard through the gate on the side of the garage which was *unlocked.* (RR 9 – 151-152). He checked the backyard and didn't see anything so he rejoined his family. (RR 9 – 152).

Herman decided to try and enter the house through the open garage door. (RR 9 – 153). The interior door at the back of the garage was closed but ***unlocked***. (RR 9 – 154). He entered the house and then let his family in through the front door. (RR 9 – 154-155). Jaime's and Sandy's dogs were running around inside the house. *Id.* (RR 9 – 155).

B. Herman and Maria find Sandy locked in the master bathroom closet and tied so tightly she has to be cut out of her bindings; Jaime is found slain in the master bedroom closet.

When Herman announced, "We're here, we've arrived," he heard Sandy yelling for help. (RR 9 – 156). Her voice was "unforgettable"; he knew something was wrong. *Id.* He went through the master bedroom towards Sandy's voice. (RR 9 – 156-158). In the bathroom, he saw a chair with its back wedged under the doorknob; he removed it, opened the door and found Sandy lying on the floor of the closet. *Id*. When asked if any of the legs of the chair were on the ground and any of the legs were in the air, Herman testified, "[t]he 2 back legs were on the floor and the 2 front legs were raised." (RR 9 – 160). Herman was clear that the back two legs of the chair were ***not on top of anything; rather, they were directly touching the tiled floor***. (RR 9 – 160-161).

Sandy was "lying on the floor with her back toward the door and tied with her two arms in the back and her legs tied." (RR 9 – 161). Her head was closer to the door than her feet and her head was very close to the ground. (RR 9 – 161-162). He immediately tried to untie the ties that she had around her arms; he recalled that her arms and hands were tied with a scarf. (RR 9 – 162; State's Exhibit 571).[6] He was shown State's Exhibits 571 and 572 but was unsure if those were the items that were

[6]Mr. William "Billy" Belk, a retired homicide detective with the Houston Police Department, and expert witness for the defense, testified that Herman told investigators at the scene that Sandy was tied up with a purple belt-looking cord on her wrists and the scarf was tied around her ankles which was opposite from his in-court testimony. (RR 11 – 116).

used to tie Sandy at the ankles. (RR 9 – 162-163).[7] He began to untie Sandy at the wrists and arms but was unable because "[t]hey were very well-tied" and he couldn't find the ends of the knots. (RR 9 – 163-164). Sandy told him where he could find some scissors and he went and got them and cut her free. (RR 9 – 164-165). Maria took over with the scissors so he could go look for his brother; he did not know, nor did Sandy at the time, that Jaime had been murdered. (Shortly thereafter, he found his brother slain and the family called 911.) (RR 9 – 165-166). Sandy appeared both physically and emotionally "really bad." (RR 9 – 164-165). When asked if it appeared she was faking, he replied, "No, definitely not." *Id.*

Herman was shown Defense Exhibit 2445, a photograph of the interior of the closet, and confirmed that it accurately depicted the way the closet carpet appeared when he found Sandy. (RR 9 – 167). Herman had no recollection of seeing State's Exhibit 578–the pillow sham–in the closet. *Id*. (And, no testimony was adduced at trial from any witness that the sham was ever in the closet.) Officer Garcia interviewed Herman at the scene; Herman explained he entered the house through the

[7]The aforementioned bindings, as well as the scarf (State's Exhibit 570) used to tie Sandy up were not found anywhere in the house; that is to say, law enforcement investigators did not find any material anywhere else in the house, similar to that used to tie and bind Sandy. (RR 8 – 120-122).

open right garage door. (RR 9 – 170). Herman was never again contacted by investigators nor anyone with the Harris County District Attorney's Office. *Id.*

Maria Melgar, was also called by the defense. She confirmed Herman's testimony about Jaime and Sandy's good relationship, good character and lack of marital problems. (RR 9 – 172-173). Maria was aware of Sandy's health issues which included convulsions, lupus, hip replacements and the use of a cane. (RR 9 – 174-175). Upon arriving at Jaime and Sandy's home, they knocked on the door but no one answered; the house was dark inside and the curtains and blinds were drawn. (RR 9 – 180). After Herman entered the house through the open garage door and let the family in, they heard Sandy calling out for help, and found her in the master bathroom closet. *Id*. Maria saw a chair jammed under the closet doorknob "really hard", propped up on 2 feet (legs), and ***nothing underneath the legs–the legs were on the floor.*** (RR 9 – 182-183).[8] It was difficult to remove the chair from underneath the doorknob. (RR 9 – 183).

She left Herman and noticed Jaime's feet sticking out of the closet in the bedroom. *Id.* She was frightened but approached "a little bit" and saw that Jamie was dead. *Id.* She called the police. (RR 9 – 183-184). She returned to the bathroom and

[8]On cross-examination, Maria testified that she did not recall the chair being on a "rug" (the sham); in fact, did not recall seeing it in the bathroom. (RR 9 – 201-202).

saw Herman trying to untie Sandy; he was having a difficult time. (RR 9 – 184). She took over for him. *Id.* Sandy was crying and Maria, too, was unable to untie her because "[s]he was very tied up"; she ultimately used scissors to cut the bindings. *Id*.[9]

Maria was shown photographs of bruising on Sandy's forearms, just above her wrists; she testified Sandy was tied with her hands and arms behind her back from her wrists to just below the elbow. (RR 9 – 208-209). When shown Defense Exhibit 2643, depicting the red marks and red bruises on Sandy's right arm above her wrists, and asked, "what do you see there," Maria responded, "I think that that's where the cords injured her, when she was tied up because it was really tight...." (RR 9 – 204-205). When shown Defense Exhibit 1960, which shows a red bruise in a line that runs approximately 5 inches across Sandy's lower arm just above the wrist, Maria stated that the mark was "[f]rom the ties that she had on." (RR 9 – 205) When shown Defense Exhibit 1959, which shows a red mark or band across Sandy's lower arm, and asked what she saw there, Maria responded, "That's where she was tied, the signs that were left from the tightness that she was tied." (RR 9 – 205-206).

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[9]Maria was certain Sandy was "very well-tied up"; but mixed up the colors of the scarves and believed a scarf and cords were used. (RR 9 – 188, 191). She identified State's Exhibit 570 as being the scarf. *Id.* Maria stated a lot of time had gone by (5 years) and the events had "such an impact for me." (RR 9 – 190).

Sandy was scared and her face was bruised. (RR 9 – 184).[10] Maria helped Sandy to the chair in the bathroom and Herman said the police were coming; Sandy asked about Jaime while Maria helped her dress but Maria did not want to tell Sandy that Jaime was dead. (RR 9 – 184-185). Sandy went to look for Jaime and Maria tried to stop her. (RR 9 – 185). When Sandy saw Jaime, she began to cry and was saying, "why, why, why, Jaime?" *Id.* When asked if she could see tears down Sandy's face, Maria replied, "[o]f course, of course." (RR 9 – 186). When asked if Sandy's reaction to seeing her husband murdered appeared real, she responded, "Oh, yes." (RR 9 – 207). Maria told her daughter to "get Sandy some water." (RR 9 – 186). Before the police arrived, she saw the dogs in the house. *Id*. She helped Sandy into a clean pair of panties because Sandy had soiled the ones she had been wearing. (RR 9 – 186-187).

III. The arrival of EMS and Constables

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[10]On cross-examination, the prosecutor mischaracterized Maria's statement regarding "bruising to her face" as "[y]ou said that she had bruises *all over her face*." (RR 9 – 192) (Emphasis added). Maria corrected her: "[o]n her face, not all over her face." *Id*. What Maria described corresponds perfectly with Defense Exhibits 29 and 30–photographs taken of Sandy's face.

As Maria untied her, Sandy said her head hurt a lot, that she had felt a blow to her head, had passed out, but didn't know what happened. (RR 9 – 194). Sandy recalled that Jaime went to get the barking dogs but didn't come back; she didn't say where she was or how long she waited for Jaime to return. (RR 9 – 199).

A. Paramedic Roberts finds Sandy "crying hysterically", "inconsolable", in shock, and has experienced a loss of time

Upon arrival, Paramedic Stephanie Roberts found Jaime dead in the master closet, checked his pulse,[11] found none, and heard Sandy "screaming and crying" in the master bathroom. (RR 6 – 24).[12] Sandy was "crying hysterically"; "inconsolable", "screaming", and "in shock." (RR 6 – 42, 52). She cried throughout the *entire* medical assessment at the scene. (RR 6 – 42, 52, 61). Trying to speak with Sandy "was very difficult, because she was so upset": "[I]t was pieces by pieces we had to work with" and Sandy did not appear to understand everything that was going on. (RR 6 – 26-27, 30, 51).[13] Roberts asked Sandy if she had been injured wanting "to make sure she wasn't stabbed as well"; Sandy said she was not harmed and Roberts observed no cuts or bleeding. (RR 6 – 26-27).

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[11]The prosecutor made a big deal about Sandy checking Jaime's vitals when he obviously was dead. (RR 7 – 78-79). Roberts testified she checked his pulse "to make sure" even though he was dead. (RR 6 – 24-25).

[12]Roberts made notations in her report that the bedroom "was in disarray. There was items from a wallet on the bed and medication bottles on the floor and clothes strewn about." (State's Exhibit 669, Page 3 of 5).

[13]Defense counsel actually subpoenaed the EMS records in question and placed them on file with the Harris County District Clerk. (CR – 158-161). The prosecution and the investigating officers never bothered to retrieve these records prior to trial. The prosecutor offered into evidence what defense counsel had earlier filed of record. (State's Exhibit 669).

Sandy was wearing a black robe; Roberts did not recall if she was wearing blue jeans but did recall that Sandy was not wearing shoes or socks. (RR 6 – 41-42, 51). (State's Exhibit 1944, the first photograph taken by C.S.I. Officer M. V. Carpenter upon his arrival at the scene (*see discussion, infra*), depicts Sandy wearing the black robe, blue jeans and socks.) Roberts saw no blood on Sandy. (RR 6 – 51). The police arrived and moved everyone into the living room. (RR 6 – 27). Sandy had diarrhea and went to the restroom several times accompanied by a police officer. (RR 6 – 28, 44). Roberts had no reason to doubt that Sandy had diarrhea. (RR 6 – 44).

Sandy repeated several times that she thought she had possibly had a seizure, that she had epilepsy,[14] and that she had woken up with a headache and her joints hurting; "she said that's usually what happens after she had a seizure" and she will usually sleep for a few hours. (RR 6 – 32-33). She also told Roberts the left side of her head hurt. (RR 6 – 32).[15]

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[14]Sandy also said she had both hips replaced, had hypothyroidism, lupus and seizures. (RR 6 – 48). Lupus is an auto-immune disease where the immune system attacks vital organs in the body. (RR 12 – 39-41). Symptoms include joint and muscle pain, and fatigue. *Id.* Lupus caused swelling, stiffness, and poor circulation to her hands. (RR 12 – 40). Sandy was taking seizure and pain medication as well as anti-depressants. (RR 6 – 50).

[15]On re-direct, the prosecutor asked Roberts, "She did not tell you that her head hurt? She didn't say that; is that right?" (RR 6 – 62). Roberts disagreed and confirmed, however, that Sandy *did say* the left side of her head hurt. *Id.*

Roberts did not see any bumps or bruises on Sandy's face, nor did she feel anything when she examined Sandy's head. (RR 6 – 34-35). Roberts acknowledged, however, that there are instances where a hematoma or bruise, as well as a bump, might not appear initially but will later. (RR 6 – 46). She confirmed that there are cases where someone is hit on the head and a knot *never* forms. (RR 6 – 63). She assessed Sandy's hands; her report indicated Sandy had no cuts, bruises, broken nails, etc. (RR 6 – 60; State's Exhibit 669).

Sandy told Roberts that she had been tied by her wrists and ankles with her arms behind her back very tightly and was unable to free herself. (RR 6 – 35, 54-55).[16] Roberts' Ambulance Record–State's Exhibit 669–incorrectly indicated, "Pt. Had no visible markins [sic] to her *upper or lower extremities* of being bound." (State's Exhibit 669, page 3 of 5) (Emphasis added). (That is belied by Carpenter's scene photographs of Sandy's upper extremities which show bruising and red marks as confirmed by Maria Melgar.) *See* State's Exhibits 1958-1960, 2640-2643.[17]

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[16]Roberts did not see markings or injuries on Sandy's wrists and ankles which in her opinion would indicate Sandy was tied up for 12 to 14 hours; however, she did not ask Sandy what she was tied up with and *had no knowledge of what Sandy was tied up with*. (RR 6 – 36, 55).

[17]As far as Sandy's ankles are concerned, Sandy told the detectives that after she got out of the Jacuzzi she sat down on her chair in the bathroom closet to put on her booties (socks) and to apply lotion to her legs; she also informed Roberts that after she got out of the Jacuzzi she got dressed. (continued...)

Sandy told Roberts that she remembered going out to her anniversary dinner, stopping at CVS and then going home and getting into the bathtub for about two hours. (RR 6 – 31). She and Jaime got in the bathtub around 10:30 p.m.; and the last thing she remembered was getting out of the tub and getting dressed around 1:00 a.m. *Id.* While in the bathroom closet, she recalled waking up and falling back asleep, and waking up again when she heard dogs barking and the voices of her family. *Id.*

It was not clear when Sandy awoke during this ordeal or how many times she awoke; from the point when she got out of the Jacuzzi and got dressed until later when her family found her in the closet, she didn't have much of a memory. (RR 6 – 54). Roberts' own EMS records entries reflect the following: "Pt. had no sense of time and last recalls a time of about 1:00 a.m. this morning. Pt. did not realize that it was evening time and that approx. 15 hours had passed that she was unaware of events." (State's Exhibit 669 at 3). As Roberts explained, "*she had told me that last she remembers time-wise was 1:00 a.m. and we're at nearly 15 hours later, so she had a loss of time during that period.*" (RR 6 – 30-31) (Emphasis added).

Roberts had never been interviewed by the detectives on this case, Carrizal or Dousay, and had only been contacted by the prosecutor two weeks before trial. (RR

(...continued)
(RR 6 – 31-32; State's Exhibit 673, 00:48:01-00:48:29).

6 – 57). On re-direct, Roberts reluctantly stated that she initially thought the situation–in her word – was "fishy." (RR 6 – 66). She conceded on cross-examination that she was not a police officer and didn't "have a clue" what the evidence was in the case; further, she did not back off of her prior testimony that when she saw Sandy and interacted with her she appeared genuine; she was *not* saying that Sandy was faking it. (RR 6 – 42, 69 – 71).

B. Deputy Jennifer Martinez

Martinez was one of the first officers at the scene but arrived shortly after EMS personnel. (RR 6 – 78). Sandy was in the master bathroom wearing a nightgown, jeans, and socks. (RR 6 – 100, 102).[18] She was escorted to the bathroom because of diarrhea. (RR 6 – 88-89). Sandy didn't remember what had happened; she was freaking out and crying. (RR 6 – 84).[19] Martinez knew Sandy was upset and "it wasn't coming out and she needed to be calmed down before she could think clearly and tell

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[18]Compare with Robert's testimony, *supra,* at 13.

[19]Martinez asserted Sandy cried without tears although this was never documented. (RR 6 – 81). When asked if it was essential to document significant events/observations in her offense report, Martinez readily agreed; it was established, however, that no such entry appeared anywhere in her investigative memorandum. (RR 6 – 102). Martinez was asked by the prosecutor if Sandy was panicking or "do you know if she was acting like she was panicking? Do you know the difference?" (RR 6 – 81-82). Martinez dutifully replied, "To me it looked like she was acting like she was panicking, *but I don't know. I mean I'm not–I am not qualified to say.*" *Id.* (Emphasis added.) No she wasn't.

me what happened." (RR 6 – 103). Sandy said the last thing she remembered was being in the bathtub (Jacuzzi), dogs barking, so Jaime got out to put the dogs up. (RR 6 – 84-85). Martinez thought Sandy heard dogs barking but didn't say where from. (RR 6 – 85).[20]

It was Martinez' understanding that Sandy had been tied up and that her sister-in-law (Maria) had untied her; however, she (Martinez) had no memory of ever interviewing Maria. (RR 6 – 92). It was her understanding that Maria found Sandy tied up with a *cloth* material; it was not wire or rope. (RR 6 – 107). Martinez testified seeing "no markings, redness, or indentions" on Sandy's wrists, arms, and ankles; however, on cross-examination, a different picture emerged. (RR 6 – 91). Martinez admitted, "*I don't remember checking her ankles.*" (RR 6 – 107) (Emphasis added).[21] She testified that she looked at Sandy's *arms* and did not see any red marks. *Id*. (Again, this is contradicted by C.S.I. Carpenter's series of photographs of the red

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[20]Herman testified that the dogs were running inside the house and soon ran out through the doggie door. (RR 9 – 155). Martinez did not know where the dogs were when the officers responded to the scene but remembered them barking. (RR 6 – 85).

[21]On re-direct, she was asked about her offense report and still maintained that she had no memory of looking at Sandy's ankles but if her report said she had, then she did. (RR 6 – 124). As the record reflects, Sandy specifically asked the detectives at the beginning of her interrogation to take photographs of her ankles where she had been tied up but they blew her off and refused to do so. (State's Exhibit 673, 29:45:26; RR 7 – 147).

marks on Sandy's arms–Defense Exhibits 1959, 1960, 2642 and 2643–*see infra*, and the testimony of Maria Melgar, *supra*.)

Martinez noticed a bucket in the dining room which smelled like Clorox–"a real strong odor"–with a mop; however, she ***did not smell what she assumed was Clorox anywhere else in the house***. (RR 6 – 93-94). She also saw strips of paper "around the whole house" and a vacuum cleaner with shredded paper in its cannister. (RR 6 – 93). *See discussion, infra.*

She claimed the house did not look burglarized *because there was no forced entry*. Her inspection with respect to "forced entry" did ***not*** , however, ***include the open garage door and the unlocked interior door of the garage***. (RR 6 – 112). She thought it was odd that clothes were still folded in the drawers and that items typically stolen such as jewelry, bicycle, electronics and televisions[22] were still there. (RR 6 – 83, 95-96). She overplayed her hand, it is submitted, by testifying "*everything was still there. It didn't seem like anything of value was taken*." (RR 6 – 95) (Emphasis added). On cross-examination, she acknowledged she "wouldn't have a clue what may be missing." (RR 6 – 115-116). Moreover, she did not know if money was found or was missing from Jaime's or Sandy's wallets. (RR 6 – 116).

[22]Most of the televisions were heavy, "old school" models. (*See for example,* State's Exhibits 147, 188).

Amazingly, the prosecutor asked her if Sandy ever pointed out any stolen items; Martinez testified that she did not. (RR 6 – 96). On cross-examination, it was established, however, that when EMS and law enforcement arrived, Sandy was initially in the master bathroom and was taken to another bathroom while she was having diarrhea, then moved to the living room where she was in their constant presence; because she was sick again, they escorted her back to the bathroom, and then put her in the back of a patrol car by 6:00 p.m. where she remained for approximately three hours until she was transferred to Lockwood to be interrogated. (RR 6 – 118-120). When asked if the prosecutor's question, "Did she (Sandy) ever point out any items that were stolen?" was fair, Martinez agreed that there would have been no way for Sandy to know what was stolen. (RR 6 – 121). On cross and recross-examination, she confirmed it was *not* fair to suggest that Sandy had any opportunity to look for stolen items. (RR 6 – 128). Martinez admitted she was not trying to tell the jury that nothing was stolen. (RR 6 – 121).

Trying to score cheap points, the prosecutor asked Martinez: "did (Sandy) ever mention her husband during the time that she was with you?"; Martinez faithfully responded, "No. She never once asked how he was doing." (RR 6 – 94). Once again, on cross-examination, Martinez had to admit that she was unaware that Sandy had *already found out* and experienced the tragedy of seeing her husband slain *prior* to

the arrival of EMS and the police; she agreed that fact answered the question why Sandy did not ask about Jaime. (RR 6 – 121-122).[23]

IV. CSU investigates the scene and gathers evidence

A. CSU arrives at the scene and receives general information from first responders

Maurice Carpenter, a member of the CSU unit of the Harris County Sheriff's Office (HCSO) and the principal crime scene investigator in this case, arrived at the Melgar residence around 6:30 p.m. (RR 4 – 41, 185). It was dark outside and visibility was poor; there was minimal artificial lighting and no Christmas lights strung on the Melgar home. (RR 4 – 186, 190). The majority of the lights inside the house were on upon his arrival; however, he did not know if that was the case when the Melgar family arrived earlier that day. (RR 4 – 186). (As has been demonstrated, *supra*, Maria Melgar confirmed that it was dark inside the residence when she and her family were finally able to gain entry).

Even though Ruben Carrizal of the HCSO had been assigned as the "lead detective" for this investigation, Carpenter dealt primarily with Carrizal's partner,

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[23]Detective Dousay confirmed that he asked Sandy what her understanding was as to what had happened and who had told her that her husband had been murdered. (RR 8 – 117-118). She informed him that after she was untied she heard screaming and ran over to where Jaime's body was and checked his pulse. (RR 8 – 118). Dousay stated to Sandy, "I didn't know that." *Id.* He acknowledged that he did not know that Sandy had seen Jaime's body before the arrival of EMS. (RR 8 – 118-119).

Homicide Detective J.T. Dousay. (RR 5 – 189).[24] In all, Carpenter spent less than 11 hours at the scene investigating this case, leaving at 4:40 a.m. (RR 4 – 49). Upon his departure, the scene was released and he never returned. (RR 5 – 9).[25]

Carpenter confirmed the importance of investigators preparing offense reports quickly because other investigative team members relied on them as the investigation progressed. (RR 4 – 195-196). (Later testimony would reveal that Carrizal was essentially disengaged in the process, having already made up his mind as to Sandy's guilt; his initial report was not prepared until July 30, 2013 over **seven months** after first being assigned to the case.) (RR 10 – 145). Carpenter contended that criminal investigators sometimes are told one set of facts and it turns out to be something else; that is why they "do a broad investigation" which they supposedly did in this case. (RR 4 – 47-48). He agreed with defense counsel that it is fundamental that

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[24]Although Carpenter testified that Dousay was the lead investigator, that statement was disingenuous. On cross-examination he acknowledged that actually Carrizal had been assigned as the lead investigator at the time of the investigation but that Dousay was *currently* the lead investigator (at a time when no investigation was being conducted). (RR 4 – 189). As the record reflects, after Jaime's murder but before the trial, Carrizal was hired by the Harris County District Attorney's Office as an investigator but was permitted to resign in lieu of being terminated for back dating a search warrant return and then lying about it; he was ultimately rehired by HCSO but fired soon thereafter for lying, again, this time about his termination from the District Attorney's Office. (CR – 321; *See discussion, infra*).

[25]Carpenter confirmed that once the scene was released it is not inappropriate for family to return home. (RR 5 – 9-10).

investigators "be unbiased, objective, and thorough" and no decision should be made to file charges until the investigation concludes. *Id*. (As will be seen *infra*, these *fundamentals were literally ignored*.) Of critical importance to this case, Carpenter testified that during the course of the investigation, including Sandy's interrogation, the detectives and CSU officers shared information with one another. (RR 4 – 49).[26]

B. There are no signs of "forced entry" but investigators are oblivious to the fact that a garage door is up and the interior door leading into the residence from the garage does not lock and the doorknob is broken

A central tenet of the State's theory of the case against Sandy was that law enforcement officers found no apparent "forced" entry into the residence through the doors or windows. (RR 4 – 58-59, 77). Carpenter looked for broken splintered wood and pry marks around the door locks and windows and saw none. (RR 4 – 59, 163; State's Exhibits 459-514). He even examined the gate to the back fence of the house to determine whether it had been broken. (RR 4 – 58).[27]

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[26]As will be demonstrated, Sandy provided information during her interrogation that reasonably called for follow up investigation at the scene, and as to Sandy herself, but that never occurred.

[27]On cross-examination, he acknowledged he never checked the backyard gate to see if it was *unlocked* or not, nor was this documented in his offense report. (RR 5 – 22-23). (As already demonstrated, Herman Melgar testified that the gate to the backyard was *unlocked* .) (RR 9 – 152-153).

(continued...)

But, as Carpenter acknowledged on cross-examination, upon his arrival at the scene, he noticed that the Melgar residence had a two car garage with two garage doors and the right garage door was ***open***. (RR 5 – 14-15; Defense Exhibit 2018). He agreed Defense Exhibit 2018–a photograph depicting the opened right garage door – accurately portrayed how he found the scene. *Id*. And, it was his understanding that it was open earlier when the family arrived for dinner. *Id.*

While the prosecutor spent considerable time–including offering approximately 70 photographs to establish that doors and windows were locked showing no signs of forced entry–disturbingly, **no attention was paid to the open garage door and unlocked *interior door* leading directly into the house**. (RR 5 – 30; Defense Exhibit 2022; State's Exhibits 24-31, 56-57, 106-109, 459-514).[28] The defense demonstrated that the ***sole*** focus in the investigation had been directed toward establishing no breach of the front or back doors and windows. *See for example*, Defense Exhibits 2044-2045, 2047-2049, 2051-2053, 2055.)

(...continued)

Lead Detective Carrizal documented that wood on the fence "did not appear to have any wood missing" but never bothered to ascertain if the *gate* to the fence even had a lock. (RR 10 – 18). He did document that he saw no footprints in the backyard but this was of no moment: crime scene investigators had walked the entire perimeter of the backyard when checking on possible broken windows and left no footprints themselves. (RR 10 – 84).

[28]As will be demonstrated, *infra,* no effort was even made to attempt to lift possible latent finger prints from the exterior side of the interior garage door.

Carpenter was questioned about Defense Exhibit 2207, a photograph of the interior garage door showing it was "akimbo" and "sticking open"; he thought that it may not be level. (RR 5 – 35-36). He was shown Defense Exhibit 2069, a photograph, establishing that the locking mechanism (hammer or bolt), although extended, did *not* go into the faceplate in the door jamb. (RR 5 – 37). He acknowledged that the door was ajar. (RR 5 – 44). He admitted that he did not take *any* photographs of the interior door's locking hardware. (RR 5 – 43). Although he documented in his offense report that the interior door "was equipped with a locking entry knob," amazingly, he ***never attempted to lock the door or determine whether the lock even worked***. (RR 5 – 44).

On December 26th, two CSU officers were dispatched to the scene by detectives[29] to retrieve a backpack found in the garage by Elizabeth Melgar, Sandy's daughter. They admitted that they were never asked by detectives to inspect the interior garage door and verify whether the locking mechanism worked. (RR 6 – 159, 194-195.) Deputy Kirkley agreed that State's Exhibit 591 accurately depicted the

[29]Detective Dousay was aware that perhaps the interior door did not lock or work properly but never shared that information with Carpenter. (State's Exhibit 673, 22:37:00; RR 8 – 79-81). Dousay acknowledged that when Sandy was questioned about the interior door she stated: "we never keep that door locked" and "I don't even think it locks. I don't know if it locks." (RR 8 – 80). He did nothing with this information and "could not recall" inspecting it himself. At least Carrizal recalled that he was aware of the issue with the interior garage door but **did not** pass that information on to CSUs. (RR 10 – 220-221).

door in the condition they found it and the door did not appear to close all the way. (RR 5 – 159).[30]

C. Interior of the residence and attached garage (except for master bedroom and bathroom)

1. General layout of the residence; interior door of the garage

It was established that a person who entered through the interior garage door would pass through the laundry nook and immediately be able to see into the kitchen and easily see a kitchen knife on a cutting board. (RR 5 – 58). Carpenter also found kitchen knives in a kitchen drawer which were of a similar style to, and made by the same manufacturer of, the knife (State's Exhibit 569) retrieved from the Jacuzzi. (RR 4 – 81-82). He had no knowledge if State's Exhibit 569 had been out on the cutting board (and easily visible) prior to being found in the Jacuzzi. (RR 5 – 66).[31]

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[30]Sandy's daughter, Elizabeth, also brought to the detectives attention the fact that the lock to the interior door did not work on December 26th. *See discussion*, *infra.*

[31]Part of the defensive theory was that the intruder(s) entered through the open exterior garage door and then proceeded into the house through the unlocked interior door at the back of the garage. Once in the residence, they walked directly into the kitchen and grabbed the murder weapon from the counter top or got it out of a drawer.

Carpenter inspected the contents of the trash can in the kitchen[32] and retrieved a CVS receipt for the purchase of two bottles of soda on December 22, 2012 at 21:33 (9:33 p.m.). (RR 4 – 146; Defense Exhibit 2094; RR 5 – 61). He acknowledged that blood "would be one of the main items I would be looking for at a murder scene." And he found none. (RR 5 – 63). He found nothing in the trash can of evidentiary value. (RR 5 – 60).

2. Breakfast nook, livingroom, and home office area of the residence

Sandy and Jaime had small dogs and puppies; Carpenter observed plywood strategically placed in the breakfast nook to corral the puppies. (RR 4 – 75-76; State's Exhibit10). The backdoor had a small "doggie door" cut into the bottom for the dogs to come and go. (RR 5 – 77; State's Exhibit 105). Carpenter noted "pee" pads on the floor of the home office and observed and smelled dog feces and urine. (RR 5 – 48; Defense Exhibit 2116).

The dogs played a significant role in the trial. As will be seen *infra*, Sandy told the detectives in her interrogation that Jaime got out of the Jacuzzi to check on the

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[32]Amazingly, when asked if he had searched the trash cans outside, he replied, "I don't recall." (RR 5 – 162). And this was literally on the heels of him contending that he had conducted a thorough search of the crime scene. *Id.*

dogs that were barking[33] in the backyard and bring them inside and that was the last time she saw him alive. (RR 8 – 107). The State did its best to suggest the dogs were *never* outside while Jaime and Sandy were in the Jacuzzi, and were found by the police in the office with the door closed. (RR 4 – 93-94; State's Exhibit 2). Carpenter testified it appeared the dogs had been there for some time because of feces on the floor. (RR 4 – 93-94; State's Exhibits 186 and 187). While the dogs were placed in the office by first responders before Carpenter and detectives arrived, as has been demonstrated, Herman and Maria Melgar testified that when they arrived, the dogs were running through the house. (RR 9 – 155).

Carpenter observed a vacuum cleaner in the living room. (RR 5 – 49; Defense Exhibit 2109). No analysis was ever conducted on its contents. (RR 5 – 49-50, 53). He also testified that it did not appear any of the electronics in the living room had been "messed with" or had tried to be removed. (RR 4 – 80).[34] He was directed by

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[33]It was part of the defensive theory that perhaps the dogs were barking because of the presence of strangers in the backyard or on the premises.

[34]As will be demonstrated in great detail, *infra,* there was ***no*** forensic evidence linking Sandy to the murder of Jaime and *nothing* about their relationship and marriage that reasonably suggested, much less established, the existence of any animus, ill-will, or unhappiness between them. To the contrary, the uncontradicted evidence demonstrated that they were in a very loving, happy, fulfilling marriage and both enjoyed excellent reputations for being peaceable and non-violent; there had *never been any assaultive behavior or acts of violence* committed by either one of them. *See discussion*, *infra.*
(continued...)

defense counsel to an area below the television where there were two slots for audio-video equipment. (RR 5 – 67; Defense Exhibit 2109). Carpenter was asked about the cable "snaking out of the [left] hole in the cabinet down to the ground" which was not documented in his offense report. (RR 5 – 68). When it was suggested that it appeared there was space for another piece of equipment that was missing, Carpenter replied, "I really don't see room." *Id*. Carpenter was not sure where the cable led and did nothing to find out. (Later testimony established that this space normally housed an Xbox which had been removed and was later found in the previously mentioned backpack in the garage. (RR 12 – 75, 63-64).[35]

(...continued)

Because of the very real reality that the prosecution had no forensic evidence linking Sandy to the murder, a theme emerged in the trial that was touched upon inferentially by several State's witnesses during their direct examination: namely, that Sandy must have been responsible for murdering her husband because there was no "forced entry" into the premises, nothing appeared missing from the house, the house didn't appear ransacked as is sometimes the case in home invasion robberies, and purportedly, there were aspects of the scene that suggested it might have been "staged". From the prosecution's viewpoint, this was the "evidence" which proved beyond a reasonable doubt that Sandy murdered her husband. The inherent problem with this theory or confluence of "events" is that it doesn't hold water, cannot withstand critical examination, and, in any event, is not evidence which establishes Sandy's guilt beyond a reasonable doubt.

[35]Defense Exhibit 32 is a photograph of the Xbox found in the backpack in the garage. As can readily be seen, it is ***square***--not rectangular–and could easily fit in the open space where the unattached video cable was observed "snaking" out of the wall. (Defense Exhibit 2109).

As Deputy Martinez testified, and will be discussed in greater detail *infra,* a bucket and a mop were observed in the dining and living room area out in the open "[p]retty much there for the whole world to see." (RR 5 – 45; RR 4 – 68-69; State's Exhibit 76). Carpenter discerned no odor emanating form the bucket; it contained a clear liquid that "looked like water." (RR 4 – 69; RR 5 – 46-47). He took a closeup photograph "to show anything that might have been on the mop." (RR 4 – 69). No analysis was ever conducted on any of this, nor were any of these items tagged and removed from the premises for later examination. (RR 5 – 47; Defense Exhibit 15).[36] *See discussion, infra*. It was clear that he saw no blood on the tile floor. *Id*.

3. Elizabeth Melgar's bedroom and guestroom–the prosecutor attempts to mislead the jury as to evidence found on Jaime's body and distinctly different evidence found in the guest bedroom closet

There were three bedrooms in the Melgar residence, all accessible from the living room. (Defense Exhibit 2172; State's Exhibits 2, 115). The front bedroom was Elizabeth's. (RR 12 – 74-75; State's Exhibit 2)**.** Carpenter took photographs in her room including several of an open jewelry box with a drawer pulled out and jewelry laying atop the dresser and on the floor; he had no idea who had laid the jewelry out. (RR 5 – 70; State's Exhibits 148-150; Defense Exhibit 2168). Several dresser drawers

[36]Deputy Rossi agreed with defense counsel that there was no evidence the mop and bucket had been used to eradicate evidence in this case. (RR 9 – 93).

were partially pulled out. (Defense Exhibits 2167, 2130).[37] He observed a "pearl necklace"; on cross-examination, he admitted that he did not know and wasn't saying it was cultured pearls. (RR 4 – 87-88; 5 – 70).[38]

The right side bedside table had a top drawer slightly open and the bottom drawer fully open. (Defense Exhibit 2165). Several items were left on the bed next to it. *Id.* These items could easily have come from the open bottom drawer based on the amount of space in the drawer but Carpenter would not speculate. (RR 5 – 68-69).[39] Inside the open bottom drawer were various game disc cases associated with

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[37]Picking up on the prosecution's theme, Carpenter testified in "typical" home invasions, the drawers are *usually* pulled out all the way, or there's *usually* items strewn throughout the room. He claimed that mattresses are turned over and *usually* the whole room is in disarray. "[T]his room appeared very neat with only a couple of drawers pulled out. It didn't *seem* rifled through." (RR 4 – 86). (Emphasis added). Actually, the bedding was stripped and was pulled to the head of the bed–hardly in keeping with Carpenter's characterization of a "very neat" room. No explanation was provided as to when or how that might have occurred. (RR 5 – 88). As for Carpenter's statement that there were "only a couple of drawers pulled out", in fact, *both* bed side tables drawers had been pulled out and at least *three* drawers of the dresser were open; moreover, Carpenter offered no testimony as to whether he ever bothered to determine if the drawers (or others in the house) were the type that would come out all of the way if pulled or if had to be detached from the cabinetry before being removed. In any event, apparently he believed that the opened dresser drawers might be possible evidence of a crime because he swabbed *some but not all* for the presence of touch DNA. (Defense Exhibit 15–SW16).

[38]Later testimony established that Sandy and Elizabeth Melgar wore inexpensive "costume" jewelry like that "pearl necklace". (RR 12 – 74).

[39]Tellingly, when asked by the prosecutor if it appeared that anything had been taken out of the drawer, he testified that it did not appear so. (RR 4 – 88). How someone could possibly divine that

(continued...)

an "Xbox 360." (RR 5 – 68-69; Defense Exhibit 2166). Carpenter acknowledged that he was aware that an "Xbox 360" was found by other deputies on December 26th in a backpack in the garage. (RR 5 – 69).[40] (*See discussion*, *infra.*)

On cross-examination, Carpenter was asked about watches and other jewelry which were lying on the floor near the dresser. (RR 5 – 71-72; Defense Exhibit 2154). This was absent from his offense report. (RR 5 – 72). When asked if that was "consistent with someone going through jewelry, and that [the jewelry] falling to the ground?", he replied: "[i]t's consistent with it being *inadvertently* dropped to the ground." *Id.* (Emphasis added.) [41]

Within the guestroom closet, Carpenter found what he described as "unknown type of cord tied in knots." (RR 4 – 91). He took several photographs and gathered them as evidence. Incredibly, the prosecutor asked Carpenter whether Jaime had

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(...continued)
it did not appear that anything had been *taken out of the drawer* when he did not have any idea what was *actually in the drawer* prior to his arrival at the scene, coupled with the fact that there was plenty of space left in the drawer, speaks volumes about the "objectiveness" of this investigation.

[40]As will be seen, *infra,* a number of other items were found in the backpack including jewelry, an Xbox, and Gears of War game identified by Elizabeth as hers which she kept in the very drawer referenced in the preceding footnote. (RR 12 – 74-75).

[41]How anyone could fairly divine that jewelry found its way to the ground by an "inadvertent" movement borders on the fantastic. In any event, if it was "inadvertently" dropped as Carpenter surmised, that would be entirely consistent with a home invader clumsily knocking the jewelry off of the dresser as s(he) went through the Melgars' property looking for items to steal.

"anything on his body that was similar to this cord?", and Carpenter responded, "Yeah, he had a cord[42] around his body." (RR 4 – 91). In response to the question, "[w]as it the approximate size and color of this cord?" Carpenter testified, "Yes." *Id*. Continuing, the prosecutor asked, "And the red cord that's across his body, is that red cord that we were talking about that was seen in the extra bedroom that kind of looked alike?" he replied, "Yes." (RR 4 – 138). State's Exhibits 173-175 are close ups of the tied red cord found in the guestroom closet. When asked why he retrieved State's Exhibit 173, he responded, "[i]t was showing the cord was tied into a knot." (RR 4 – 91). The knot was important because "[t]he homicide investigators wanted to show the comparison of the type of knots and the two types of cords." (RR 5 – 92).

Obviously, the prosecutor was suggesting to the jury that the red rope found around Jaime's body was associated with the red cord found in the guestroom closet and, therefore, came from the house, increasing the likelihood that Sandy may have been the killer. But this ploy on the prosecution's part was disingenuous, and, in fact, was potentially dangerous because it could have confused the jury. The only thing *similar* about the two "cords" is that they are both red. The red rope found around Jaime's body was ***not*** the same or even similar to the "two tied cords" seized by

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[42]The red "cord" that was around Jaime's chest and upper part of his waist was actually a piece of rope. (RR 4 – 141). Apparently, it was tied in the front. *Id.* (State's Exhibit 384).

Carpenter from the guestroom closet. *See and compare* State's Exhibits 174 and 175–photos of the two tied cords–with State's Exhibit 408–the red rope found on Jaime's body. It can clearly and unquestionably be seen that the rope found on Jaime's body is of a *different* and *thicker* gauge and made from different materials than the tied satin-like fabric cords removed from the guestroom closet; in addition, the two satin-like cords are pleated or folded whereas the red rope is cylindrical in shape.

Ultimately, no effort was made by law enforcement to compare the knots on the "two tied" cords with the knots on the red rope found around Jaime's body (or, for that matter, with the knots on the bindings that were cut off of Sandy by Herman and Maria Melgar.) Finally, no evidence was adduced which established that any red rope identical or even similar to the red rope found on Jaime's body was found elsewhere on the premises; nor was a similar scarf or purple cloth used to tie Sandy found.

4. Attached garage and driveway

a. Interior of garage

The exterior garage doors were activated by two buttons located next to each other on the wall to the left of the interior garage door or by "clickers" (remotes) that were kept in the Melgars' vehicles. (RR 4 – 64; RR 5 – 13; State's Exhibit 67). Carpenter testified that the right hand side of the garage had containers, buckets, trash

bags, tools and equipment[43] and "it looks like it would be difficult to maneuver through that area" (the right side of the garage). (RR 4 – 61-62; State's Exhibit 60).[44] (Any fair consideration of State's Exhibit 60 shows that a person could enter or exit the garage through the right side. The bags of leaves and other items were no serious impediment to coming or going. Herman Melgar was able to walk through the right side of the garage to let his family into the house.)[45]

b. Jaime's truck parked in the driveway

Jaime's truck was parked outside the garage on the right side of the driveway and was locked, according to Carpenter. (RR 5 – 28). He acknowledged that a "Slim Jim" is used by tow truck drivers and thieves to open vehicle doors. (RR 5 – 28).

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[43]Carpenter did not inventory the items in the garage but did confiscate a laptop from a recycle bin that was close to the open garage door and not far from the backpack that was later found. *See* Defense Exhibits 2018 and 2026. When asked on cross-examination if that was "an unusual place to leave a laptop", he responded, "Not if it is not functioning." (RR 5 – 30). When asked, "[w]as it functioning"?, he replied, "I don't have that knowledge." (RR 5 – 30).

[44]The Melgar's Infiniti was parked on the left side of the garage; the right side was used for storage. (RR 5 – 15; Defense Exhibit 2018).

[45]As has been stated, *supra,* one of the recurring themes of the prosecution was that there was property in the garage and house that was not taken or "rifled" through suggesting there must not have been a home invasion or burglary otherwise the items wouldn't have been left behind. *See,* for example, (RR 4 – 64). The inherent weakness of this argument is that the investigators had never been to the Melgar's house (or the garage) and could not know what was in the garage the day before they arrived. (RR 5 – 30).

While he maintained he did not see signs of tampering on Jaime's truck, he agreed that a "Slim Jim" can be used without causing any damage. (RR 5 – 28). A "clicker" was kept inside Jaime's truck to access the garage doors. (RR 8 – 64, 71, 77 and RR 10 – 24; State's Exhibit 673 22:34:30).

c. Green and black backpack stuffed with stolen property

Carpenter did not recall seeing the green and black backpack (State's Exhibit 667) next to the Infiniti parked on the left side of the garage during his investigation. (RR 4 – 65). On cross-examination, he was asked about photographs he took of the interior of the garage in reference to the parked Infiniti. (RR 5 – 29). While several photographs depict the front of the Infiniti looking down the *driver's* side, he couldn't recall taking photographs from down the *passenger's* side toward the garage door. (RR 5 – 33; State's Exhibits 71, 73,74; Defense Exhibit 2084). He confirmed no one moved the parked Infiniti from the garage while conducting the investigation. (RR 5 – 29).

This is significant because had he looked more carefully or moved the car, he would have seen a black and green backpack between the Infiniti and a cardboard box near the closed garage door. (RR 6 – 165). *See* State's Exhibit 579. The backpack was found on December 26th by Elizabeth Melgar and collected by another CSU unit.

(State's Exhibit 667; *See discussion, infra*).[46] When it was discovered, the Infiniti was no longer in the garage. (RR 12 – 62). Inside the backpack was an Xbox, controllers, Gears of War Xbox game and case, and several pieces of jewelry; DNA analysis established a link with DNA obtained from jewelry boxes swabbed in the master bathroom. (RR 12 – 186-195). In addition, **third-party** DNA, including **an "unknown female no. 1",** was found on an earring in the backpack that did not match the DNA taken from the Melgar family. (RR 12 – 186-195).

Carpenter took photographs from the open right garage door looking into the interior of the garage. (RR 5 – 29; Defense Exhibit 2022). He was shown Defense Exhibit 2, a blowup of State's Exhibit 68, the latter being a photograph Carpenter took before he released the scene. (RR 5 – 130-131). He agreed that Defense Exhibit 2 and State's Exhibit 68 were the *same* image. (RR 5 – 131). When the top of the black and green backpack was pointed out to him in his photograph, he stated: "**It looks similar to the backpack. Same color, it appears to be.**" (RR 5 – 132) (Emphasis added). Significantly, the backpack ***was*** in the garage at the time of his

[46]Carrizal and Dousay interviewed Elizabeth and her husband on December 26th and instructed them to go to the residence and alert them if any property was discovered missing. (RR 8 – 34). Upon finding the backpack and missing items, Elizabeth called the detectives.

investigation but missed by him and other investigators. (State's Exhibit 68; Defense Exhibit 2; RR 5 – 130-131).

D. Master bedroom and bathroom

1. Master bedroom–investigators turn a "blind eye" to the fact that a television, prescription drugs, and cash from Jaime's billfold and Sandy's purse are missing

Jaime's body was found on the floor of his master bedroom closet. (State's Exhibit 1). The master bedroom, the closet, as well as the master bathroom closet, were carpeted. (Defense Exhibit 2226; State's Exhibits 223, 350). *These were the only carpeted areas of the house*. A small nightstand was to the left of the bedroom door. (State's Exhibit 1; State's Exhibit 216; Defense Exhibits 2230 and 2235). All three drawers were found opened; a plastic bag can be seen pulled out extending from the top drawer. (*Id;* State's Exhibit 218). Carpenter opined that except for the plastic bag "that was the only item that was in disarray there." (RR 4 – 101).

Several items, however, including pouches and prescription bottles were found strewn on the floor next to the nightstand. (State's Exhibits 220-222). Carpenter was asked by the prosecutor if prescriptions were items sometimes taken in burglaries; he replied that they were. (RR 4 – 100). On cross-examination, however, he admitted that, inexplicably, he never bothered to inventory the prescriptions left at the scene

(and thus could not confirm that opioids or similar addictive drugs had not been taken.) (RR 5 – 76).[47]

A picture frame, apparently knocked over, was found on the floor; another picture frame can be seen close to the edge of the nightstand facing the wall. Carpenter conceded that it could have been knocked over when someone was going through the drawers. (RR 5 – 75-76). (State's Exhibit 217; Defense Exhibit 2235). A glass of water was on the top of the nightstand. (Defense. Exhibit 2235; State's Exhibit 218). (Maria Melgar testified that her daughter brought Sandy a glass of water after being cut loose from her bindings.) (*See discussion, supra,* at RR 9 – 186). Carpenter acknowledged seeing what appeared to be a mixed drink glass on the runner of the treadmill. (RR 5 – 77-78; State's Exhibit 228; Defense Exhibit 2221).[48]

Carpenter was shown State's Exhibit 226 and asked about a "homemade type of antenna" sitting in the window sill near the treadmill; he stated it did not seem to

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[47]Testimony established that due to Sandy's health problems, she was prescribed several medicines including opioids. After Jaime was murdered, several prescriptions were found to be missing, including the opioids. (RR 12 – 61). The only prescription that can be seen in the photographs is Azulfidine which is used to treat ulcerative colitis and is not an opioid. *See* State's Exhibit 22; *www.Webmd.com/drugs/2/drug 11925/Asulfidine oral/details.* It was left behind.

[48]This is consistent with Sandy's statement to detectives that she and Jaime were having cocktails in the Jacuzzi and he got out to check on the barking dogs. *See discussion*, *infra.* It stands to reason that Jaime put his glass down on the treadmill as he walked through the bedroom in route to the breakfast area to take care of the dogs.

be disrupted. (RR 4 – 102). He acknowledged that its cord led to the small nightstand by the door but did not know "where's the TV set that antenna goes to." (RR 5 – 78-79). *See* State's Exhibits 230, 221, 217; and Defense Exhibits 2238 and 2239. (Later testimony established that Jaime and Sandy had a small television on the nightstand connected to the homemade antenna; the TV was missing from the house after Jaime's murder.) (RR 12 – 147-148).

Numerous items were strewn across the bed in the master bedroom including clothes, Sandy's purse, and wallet, Jaime's wallet, a prescription bottle, and a number of opened and empty jewelry boxes.[49] (State's Exhibits 252, 260 and 262; Defense

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[49]The lid of a large jewelry box (State's Exhibit 260) was found on the bed; it obviously had been taken off the jewelry box itself on the top of the Melgar's dresser. (RR 4 – 105; State's Exhibit 241.) With respect to the jewelry box and consistent with the State's theme that nothing appeared to be disturbed or to have been taken from the house, Carpenter was asked on direct examination whether it "appear[ed] like anything was taken out of that?" *Id.* He replied, "[n]ot to my knowledge." *Id.* (Of course, he would have had no way of knowing what was removed from the larger jewelry box or what jewelry was taken.)

The same is true with his testimony concerning the dresser. Although he saw a piece of clothing that had been pulled out of a drawer and noticed several of the drawers had been pulled out, he was of the view that "[e]verything else looked pretty much in place." (RR 4 – 105-106). He observed some items standing up in a drawer which appeared hadn't been "rifled through". (RR 4 – 105; State's Exhibit 235). Beyond acknowledging that *"*[m]aybe *the drawer was pulled open slowly, and not violently pulled open*" (RR 4 – 104) (emphasis added), there is an item in the drawer on the left-hand side which is not standing up and possibly was knocked over; there are several other items–most notably on the right-hand side–that have been placed close together which it appears would have prevented them from being knocked over. And, although he couldn't tell that anything was knocked over on the top of the dresser, State's Exhibit 235 depicts a prescription bottle on its side.

Exhibit 2277). Some of the items appeared to be from the purse and wallet which Carpenter moved to look at them. (RR 4 – 108). A receipt was dated December 22, 2012 with a time of 8:59. (RR 4 – 108-109).[50]

On cross-examination, Carpenter admitted, when shown Defense Exhibit 2627, that the ladies wallet was on the bed next to the purse when he arrived and he removed items, including a medical services check for $300.00, to examine them. (RR 5 – 85-86). He took photographs of "everything that was in the purse of significance." (RR 5 – 83). When defense counsel stated that he had not seen photographs of any money found in the purse or wallet, Carpenter responded, he didn't recall finding money in the purse, ladies wallet or Jaime's wallet. *Id*. He would have photographed money had he found any. (RR 5 – 83).[51]

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[50]The receipt was from Los Cucos Mexican restaurant and reflected that at 9:05 p.m. on December 22, 2012, a credit card was charged for dinner expenses for two. (RR 4 – 147-148; State's Exhibit 418). It corroborated Sandy's statement to detectives that she and Jaime went to dinner at Los Cucos to belatedly celebrate their anniversary and afterwards stopped at CVS to purchase mixers on their way home. *See discussion, infra*.

[51]The *absence* of cash from Sandy's purse and wallet and from Jaime's wallet is *very* significant and any fair and objective investigator would have chronicled that fact. When defense counsel stated that he (defense counsel) had never seen any inventory of the contents of the wallets, Carpenter responded, "[i]t was documented in the photographs." (RR 5 – 84). *But that simply is not true*. There are no photographs which depict the interior of the wallets or purse. It is submitted that nothing was stated in his offense report regarding the *absence* of cash because that is a fact totally at odds with law enforcement's theory of the case. Elizabeth Melgar confirmed that her parents kept cash in their wallets and purse, as did Rocio Reib, who testified that Sandy used cash for smaller purchases. (RR

(continued...)

Carpenter acknowledged that he found "a whole lot of jewelry boxes" opened and discarded on the bed and elsewhere in the house but he chose *not* to swab any of the *empty* jewelry boxes on the bed for DNA. (RR 5 – 79-80). Under a pillow on the bed, Carpenter found sexual "aids" such as lubricants. (RR 4 – 110). He took photographs but did not collect them as potential evidence because "[t]hey didn't seem relevant to the event at the time." *Id.,* (State's Exhibit 266).[52]

On the floor next to the dresser and bed, close to the bathroom, Carpenter found a pair of ladies panties. (RR 4 – 103-104. State's Exhibits 233.) He admitted they contained feces–a fact *not* documented in his offense report. (RR 5 – 87). Socks were also on the floor, consistent with someone pawing through the dresser. (State's Exhibit 244).

Between the bed and the bedroom closet where Jaime's body was found, Carpenter observed a chair that appeared similar to chairs in the dining room. (RR 4 – 106; State's Exhibit 245).[53] He found blood on both the seat of the chair and the

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(...continued)
11 – 191; 12 – 118).

[52]Notwithstanding that the "sex toys" did not seem relevant to Carpenter, the prosecutor later, in closing argument to the jury, wove them into a "theory"–based on no evidentiary support whatsoever–as to how the killing supposedly occurred. (*See discussion*, *infra*).

(continued...)

back of it. (RR 4 – 112-117). A white stool was located very close to the back of the chair. (RR 4 – 106-107; States's Exhibit 246 and 271). He could not determine where the white stool came from. (RR 4 – 107).[54] The seat of the chair appeared to be closely aligned with the bedroom closet (RR 4 – 112).[55] Between the bed and the closet was another nightstand; Carpenter opined nothing was in disarray or turned over on it. (RR 4 – 107; State's Exhibit 247).[56]

2. Master bedroom closet

Jaime's body was found on the floor of the master bedroom closet. (RR 4 – 140). Carpenter testified "[a]s compared to other scenes I've worked, there was quite a bit of blood, but not a lot of blood...." (RR 4 – 135). The blood was confined to the

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(...continued)

[53]The Melgars used dining room chairs in other locations in the house. In State's Exhibit 2107, a dining room chair can be seen in the living room with a blanket on it as do the sofas which is consistent with having several small dogs that get on furniture. The dining room chair in the master bedroom also had a blanket on it and was covered in hairs and fibers consistent with the small dogs jumping up on the chair to get on the bed. (State's Exhibit 286).

[54]Detectives interrogated Sandy for several hours but never bothered to ask her any questions concerning the chair or stool located next to the bed. (State's Exhibit 673).

[55]Without a scintilla of evidentiary support and contrary to her own expert's testimony, the prosecutor later theorized that Jaime was sitting in the chair when he was supposedly attacked by Sandy. (RR 13 – 166). *See discussion infra*.

[56]A lit candle was on the nightstand. (State's Exhibit 247). Testimony established there was nothing significant about it still being lit because it could burn for at least 24 hours. (RR 11 – 104-105).

closet and to the area just outside the closet. *Id.* ***No blood was found anywhere else in the house.*** (RR 5 – 156).

In the bedroom closet, blood was found on the: floor, back wall, lower clothes rod where pants were hung, the front edge of a shelf that ran parallel to the rod and the metal bracket that held it up, clothes hanging from a higher clothes rod, and items on the floor including clothes, tissue paper, papers, a white towel, and a plastic dry cleaning bag. (RR 4 – 134-136; State's Exhibits 364-370). Carpenter believed "drip patterns" of blood were on the floor and lower clothes rod, and "transfer patterns" of blood were on clothing, lower clothes rod, shelf, and back wall of the closet. (RR 4 – 136, 139-140). The blood stains on the wall appeared to be transfer stains from Jaime's head coming into contact with it; he believed it was conceivable Jaime could have hit his head on the bar and/or shelf. (RR 4 – 139-140).

Jaime had a telephone cord wrapped around his ankles; it had a knot on the end of it which faced up as opposed to under his ankles; it did not appear to be tied very tightly. (RR 4 – 142; State's Exhibits 391, 396, 397). The cord was not attached to the telephone outlet. (RR 4 – 142-143; State's Exhibit 398). A laundry bag appeared between Jaime's calves and wrapped around his lower legs; because it was beneath parts of the telephone cord, Carpenter believed it was there before the telephone cord was wrapped around Jaime's ankles and that these events occurred after he was

stabbed. (RR 4 – 143-144).[57] He was not aware of any telephones in the house missing a cord. (RR 5 – 91).

Carpenter was alerted by the detectives that there was a pistol in the closet; he located it on the lower shelf under some clothes. Transfer blood appears to be on the lower clothes rod/shelf just below the fully loaded .380. (RR 4 – 136-137; State's Exhibits 377).[58]

3. Master bathroom

Carpenter testified the master bathroom had two doors which were open (at least at the time he photographed them.) (RR 4 – 118). No testimony was offered by the State as to whether the doors were open or closed when Herman and Maria came into the house prior to the first responders and police. On the vanity of the north sink was a "pair of scissors that the family members used to cut the cords that was on the defendant." (RR 4 – 119).

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[57]The cord appeared to have blood spatter on it which would be more consistent with it being wrapped around Jaime *before* he was stabbed. (State's Exhibits 396-397).

[58]Sandy told the investigators that Jaime had a gun in the closet; it was her belief that he may have tried to get to the gun to defend himself from the attacker(s). *See discussion*, *infra.* This would be consistent with the above described blood transfer patterns near the pistol.

Numerous items were on the counter of the south vanity including opened jewelry boxes, makeup, lotions and a bra which was in the sink. (State's Exhibits 297, 305 and 306). A drawer had been pulled out; a CVS bag was on the floor as was a candle (consistent with it being knocked off of the vanity.) (RR 4 – 121; State's Exhibits 300 and 301; Defense Exhibit 2403; RR 5 – 120).

The prosecutor asked Carpenter only *one* question concerning the opened jewelry box on the vanity (*See* State's Exhibit 299): "...What did it look like?", to which he responded: "It was open. There was some jewelry boxes on the counter nearby it. Items of jewelry in the boxes and some open boxes there, the jewelry boxes." (RR 4 – 120). And that was it. No other questions were asked about any of the jewelry boxes, much less about the fact that evidence retrieved from the south vanity ***matched the third-party DNA of an unknown female no. 1*** found in the backpack in the garage.

On cross-examination, he acknowledged that the jewelry box was opened and items were "placed on the counter and gone through." (RR 5 – 106-107). He maintained "[i]t didn't look like it had been *per se* rifled through, and the box [sic] weren't scattered around in disarray. They were open, *and picked through.*" *Id.* (Emphasis added). Carpenter claimed "[*m*]*ost times*" in a "typical" home invasion, the house was a wreck, a mess, with boxes pushed off the counter and strewn

everywhere." *Id.* (Emphasis added.) He finally conceded, reluctantly, that in fact, **not all home invasions look alike**. (RR 5 – 107-108).[59] It was also established that Carpenter made the decision to retrieve seven jewelry boxes from the south vanity to process for possible DNA because they had significant potential evidentiary value. (RR 5 – 108-110; Defense Exhibit 15, Item 15). Although Sandy provided consent for investigators to take anything from the house they desired, she had no knowledge of his decision to take these jewelry boxes for DNA testing. (RR 5 – 110-111).

By the time Carpenter arrived, the Jacuzzi was off and there was standing water in it. (RR 5 – 100; State's Exhibit 294). He never turned it on and therefore could not inform the jury how loud it was when running. *Id.*[60] At the bottom of the Jacuzzi was a knife with possible "biological matter", two towels, and a woman's blouse. (State's Exhibits 294, 341-344; RR 4 – 128-129; RR 5 – 159). (The knife was later determined to be the murder weapon or at least one of them.) (RR 4 – 129).

A liquor bottle and two bottles of mixers–Coke and Sprite–were next to the Jacuzzi. (RR 4 – 119; RR 5 – 62, 102; State's Exhibits 293 and 294; Defense Exhibit

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[59]*See* testimony of veteran homicide detective, Billy Belk, *infra.*

[60]Sandy repeatedly told the detectives she could not hear what was occurring in other parts of the house after Jaime got out of the tub because the Jacuzzi was very loud when running. (RR 8 – 114-115). (The detectives knew this but no evidence was adduced that they informed Carpenter.)

2400). Carpenter agreed the CVS bag was consistent with the sodas being purchased there based upon the receipt he found. (RR 5 – 103-104). Carpenter testified that there was a bowl of strawberries by the Jacuzzi and a strawberry had been eaten which contradicted the testimony of Detective Dousay and the prosecutor's argument that Sandy had been untruthful to detectives about eating one. (RR 4 – 102-103).

In the enclosed toilet area, a plastic glove was in the trash can next to the toilet and was "right there for anyone to see it if they looked into the garbage can." (RR 5 – 156). He processed the glove for fingerprints but did not find any. (RR 5 – 158). It was ultimately submitted to HCIFS in an effort to extract DNA evidence. (RR 5 – 158). Carpenter didn't know if the glove came from a hair coloring kit. (RR 5 – 159).

A chair and items were found on the floor including a bathrobe, towels, underwear, pillow shams (which the Melgars used as bath mats/ rugs in the toilet area and the bathroom itself),[61] three pieces of a multicolored scarf with a knot in one of them, and four pieces of purple cord–cut off of Sandy. (RR 4 – 121-122, 124-126, 127; State's Exhibits 309, 319, 321, 325-328, 331, 333-337). The several pieces of purple cord and scarf were retrieved as well as one pillow sham. (Defense Exhibit 15, Items 18-24.)

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[61]Carpenter also saw pillow shams stacked in the dining room apparently used as small rugs which he didn't find unusual. (RR 4 – 71; State's Exhibit 88).

Carpenter testified that the shams[62] and scarf were the way *he* found them and that the sham seen in State's Exhibit 323 was close to the bathroom closet. (RR 4 – 124, 178).[63] However, it is clear that his observations were made ***after family and EMS personnel*** had left the bathroom prior to his arrival. (RR 4 – 126). He admitted that he did not know where the sham was when the family members came into the bathroom to rescue Sandy. (RR 5 – 137) (Emphasis added.) The same was true as to other items on the floor; Carpenter agreed he had no personal knowledge where these items were originally or if they had been moved prior to his arrival when EMS personnel and family members were in the bathroom. (RR 5 – 134).[64] State's Exhibit 332, the pillow sham was torn; he had no personal knowledge how the tear was

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[62]Several matching shams were used as bath mats. (RR 4 – 71).

[63]Clearly the images of the shams are *not* the same and demonstrate that they had been moved and repositioned between the taking of the photographs. *See and compare* State's Exhibits 333 with 334, for example.

[64]He testified that there were items of evidence altered by family members at the crime scene. (RR 4 – 43). This was one of the earliest efforts by the State to mischaracterize the evidence. On cross-examination, Carpenter conceded he was not suggesting that the Melgar family had done anything improper when they entered the bathroom to rescue Sandy prior to the arrival of emergency personnel. (RR 5 – 10).

Carpenter believed, although he did not know for a fact, that EMS personnel had *not* gone into the bathroom prior to his arrival which was shown by the record to be absolutely incorrect. (RR 5 – 95-96; 6 – 25, 81). The upshot of all of this was that the crime scene **was disturbed** by the time law enforcement began their investigation. (RR 5 – 100).

caused but conceded it was "in the area where you would open the sham to put the pillow in." (RR 4 – 126; 5 – 136).[65] No pillow shams were found in the closet where Sandy was tied up. (RR 5 – 132).

4. Master bathroom closet

a. Examination of closet interior

The door to the master bathroom closet opened outward. (State's Exhibit 348). The drawers of a chest inside the closet were pulled open. (RR 4 – 132). At least to Carpenter, "[i]t was hard to determine whether it was a messy closet or left in disarray or rifled through." *Id*. There were hanging clothes and shoe racks to the back left and right side of the closet and clothes on the floor. (State's Exhibits 352, 362, 363). He observed two indentions in the carpet which he agreed would be consistent with a chair sitting there. (RR 4 – 131; 5 – 131, 137; Defense Exhibit 2445). He agreed *"if the back legs were on those indentions, then the front of the chair would be fairly close to the closet door*." (RR 5 – 138)(Emphasis added.) (Sandy told the detectives during her interrogation that after she got out of the Jacuzzi, she went into her closet to dress and sat down on the chair to put lotion on her legs and that is the last thing she remembered.) *See discussion, infra*. Carpenter testified that he was unaware of

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[65]No testing of any kind including for DNA was performed on the sham. (RR 5 – 132).

this (the information had not been shared with him.) (RR 5 – 138). When Defense Exhibit 2445–a photograph of the lotion container located on the floor next to the door–was enlarged, he acknowledged he could see "Cocoa" and "body lotion" printed on the label. (RR 5 – 139-141).[66] He saw no blood in the closet and obtained no evidence from it. (RR 5 – 162-163).

b. The chair demonstration–a theory without any evidentiary support

Carpenter knew that a chair had been wedged against the closet door but didn't know how exactly because Herman Melgar removed it before he and other officers arrived. (RR 4 – 43-44). Investigators filmed a staged "demo" of how a person inside the closet could wedge a chair underneath the outside doorknob if the chair was placed atop a pillow sham. They would have to crouch down to the floor and pull the pillow sham through the bottom of the door space while their other arm was sticking outside the door, and then pull the back of the chair up under the knob. (State's Exhibit 672). Lt. McConnell testified he noticed a wadded up pillow sham outside of the closet door. (RR 6 – 214). He explained,"[i]t was just scrunched up; ***and I***

[66]Logically, a person would not ordinarily keep lotion on the floor near the door. Moreover, the fact that the center area of the closet was clear of clothes fully supports Sandy's statements to investigators that the chair was in the closet when she went to get dressed and that she had sat down on it to put lotion on her legs prior to being hit on the head and/or having a seizure. (RR 5 – 139-140). The chair was then removed by her assailant(s) and wedged hard under the doorknob after she was tied up.

didn't know what had caused that, whether somebody kicked it. I really didn't know why..." (RR 6 – 215-216) (Emphasis added). Investigators took the slip cover off of the chair, placed the chair on top of the pillow sham, and manipulated it and the chair towards the door; according to McConnell, the pillow sham got stuck in the doorframe "where there's a rip." (RR 6 – 217). *Id.* [67] [68]

On cross-examination, McConnell conceded the demonstration was merely a theory and he had no evidence that what the "demo" depicted actually occurred in this case. (RR 6 – 222-223). Again, he confirmed he merely saw the sham "bunched up" and did not know why. *Id.* He acknowledged, as had Carpenter, that family and first responders had been in the house before the police arrived. *Id.* He agreed the only way his experiment could work **required the back leg(s) of the chair to be on top of the pillow sham**. (RR 6 – 224). (*This is totally at odds with the testimony of Herman and Maria Melgar who were certain that the back legs of the chair were resting on the tile floor when they entered the bathroom*.)

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[67]Of course, the tear on the sham got stuck in the doorframe during the demo because of where the investigators placed the sham to begin with. McConnell stated there were two shams in the bathroom; actually there were *three*. (*See* State's Exhibits 321, 323).

[68]McConnell testified that the door was a standard hollow core door found in most homes; he was of the opinion that these types of doors are not very strong and could be broken open. (RR 6 – 222). He acknowledged that the manner in which the chair was placed underneath the doorknob would prevent a person from leaving "unless you broke the door down." (RR 6 – 226)

Tellingly, neither McConnell nor any CSU investigator ever spoke with the eyewitnesses who actually found the chair underneath the doorknob. (RR 6 – 224). McConnell was not suggesting in his testimony that in order to manipulate the chair toward the closet door that the sham would have had to tear; after all, he was able to perform his demonstration and effectively pull the chair to the door knob ***without*** tearing the sham. *Id.* Moreover, he agreed that merely because the tear lined up with the door frame (after he placed the sham in the position that he chose), didn't "establish at all that in fact the sham was used in the way that you've demonstrated in this theory...." (RR 6 – 225-226). He had no idea as to how the sham was actually torn and did not know how fresh the tears were. (RR 6 – 126). Amazingly, he was not aware if any analysis had ever been conducted on the sham–and no evidence established it had been.

E. DNA and Blood Evidence

1. Blood–even though Jaime was brutally murdered and stabbed multiple times, no blood was found in the house except in the master bedroom closet, the immediate vicinity outside the closet, on the chair, stool, and knife in the Jacuzzi; Sandy was not cut, had not bled, and none of her blood was found anywhere in the house, nor was any of Jaime's blood found on Sandy or on any of her clothing. There was no evidence of blood transfer associated with removing bloody clothing or gloves. Chemical processing established there was no attempt made by Sandy to clean the sinks, shower or Jacuzzi.

According to Carpenter, blood was present in the master bedroom and Jaime's master closet. (RR 4 – 134-135). A murder weapon, the kitchen knife, was found with blood on it at the bottom of the Jacuzzi in the master bedroom bathroom. (RR 4 – 128-129). Jaime's body was bloody and blood was on the back wall of the closet, underneath him, and on various objects and clothing in the closet. (RR 4 – 134-145). Blood was also close to the closet on a chair, a stool, on a bed sheet, and on the carpet immediately outside the closet door. (RR 4 – 1). He "didn't see any visible blood in any other parts of the house." (RR 5 – 156). [69]

Carpenter confirmed if a person had just stabbed another, gotten blood on himself and wanted to remove bloody clothes, that blood could be transferred to other objects. (RR 5 – 155). As a CSU investigator, he was particularly interested in blood transfer. *Id.* He saw no evidence of any transfer of blood consistent with someone removing their clothes. (RR 5 – 155-156).

The prosecutor did her level best to leave the false impression that chemical processing of the two sinks (north and south), tub, and shower in the master bathroom revealed the presence of blood. **(*On cross-examination, it was established that, in***

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[69]Carpenter acknowledged that in conducting a homicide investigation where the deceased was killed in his house and the spouse was the suspect he "would be on the lookout for anything bloody." (RR 5 – 63).

***fact, there was no evidence that the fluorescence which took place upon application of reagents actually established the presence of any blood.*)** Carpenter testified he applied reagents and then photographed the reaction "with the lights turned down to show any luminescence or glowing." (RR 4 – 157; State's Exhibits 447-458). He treated the areas with Bluestar which "reacts to blood and diluted blood ... and when it comes into contact with blood, it will fluoresce, and you can see that in the lightening of the photograph of those areas." (RR 4 – 157). He confirmed that it could react to blood from two months ago. *Id.* He was specifically asked, "So anytime that blood is there and is still present, it will react?" He answered, "Yes." *Id*.

The prosecutor "walked" several photographs in front of the jury depicting a "glowing luminescence" in the sinks. (RR 4 – 158). Carpenter testified there were "four–five distinct areas of varying degrees of illumination in the (south) sink", some illumination visible in the north sink, and a small amount of reaction on the rim of the Jacuzzi. (RR 4 – 159-160). He also used another reagent called LCD. (RR 4 – 160). LCD is destructive to DNA so after applying Bluestar he swabbed the areas for possible DNA and then applied the LCD. *Id*. He went over the same locations again "to be sure we didn't miss any areas that might have illuminated." (RR 4 – 161).

Surely in an effort to leave the impression that the sinks might have been cleaned with Clorox by Sandy to eradicate the presence of Jaime's blood and destroy

incriminating evidence, the prosecutor "stepped in it" when she asked Carpenter, "Let's say I've got some bloody hands, and I want to wash my bloody hands with Clorox in the sink. Is Clorox going to affect whether or not you come back with Bluestar and LCD, and show what you got?"(RR 4 – 161). He responded that both Bluestar and LCD react to chlorine which "will show up in different types of luminescence." *Id*. However, the luminescence will reveal ***the presence of chlorine bleach itself***: "*If there was chlorine across this whole surface, you can see luminescence for that whole surface. So it will react to both blood and chlorine, but (it) will illuminate in a different manner.*"*Id.* (Emphasis added.)

Not willing to let it go, the prosecutor asked Carpenter whether chlorine eliminates blood. *Id.* He responded that chlorine will destroy DNA *in* blood. *Id***.** It "wasn't clear whether it (the reactions to the reagents he saw on the sinks and tubs) was a definitive reaction to blood." *Id*. The reactions gave him an indication where to swab for possible DNA to submit to the lab for forensic analysis. (RR 4 – 162). The use of reagents was only a "presumptive test for blood"; the luminescence doesn't definitely indicate the presence of blood. (RR 4 – 162). Despite injecting the use of Clorox (chlorine) into the case, tellingly, the prosecutor chose not to ask him whether the reactions to the reagents he observed on the sinks and the tub established,

or even suggested, an effort on Sandy's part to destroy evidence. The answer would have to wait until cross-examination.

On cross-examination, Carpenter confirmed that he used reagents in the *shower* to test for the possible presence of blood but there was *no luminescence*. (RR 5 – 140-141). The shower was dry; he did not see the presence of water. (RR 5 – 140). No swabbing of the shower for the possible presence of DNA was undertaken. (RR 5 – 141). He noticed a squeegee which could be used to "get rid of water and clean up" but it was dry so no testing was conducted on it. (RR 5 – 141). He didn't see a bar of soap in the shower and didn't bother to look for one despite the fact that it would be a likely repository of blood. (RR 5 – 142). (Carpenter's testimony in this respect is belied by his own photographs. *See* State's Exhibit 315 which clearly shows there was a bar of soap in the shower.) He would expect blood to be on the floor of the shower if someone took a shower and had blood on them. *Id.* He never bothered to apply reagents to the sink or tub in the hallway bathroom, or to the kitchen sink. (RR 5 – 144).

Carpenter agreed that reagents are applied not only to ascertain the possible presence of blood but *also to see if there had been an attempt to clean up the area.* (RR 5 – 149-150). **In applying the reagents, he saw no indication that any effort had been made to scrub and clean the sinks.** (RR 5 – 149). He confirmed that

Defense Exhibit 2532–a photograph of the south sink–depicted hair, dirt, debris and "crud" on the surface. (RR 5 – 150). When asked, "So obviously, it's clear that no effort was made to clean that sink by anyone prior to the time you arrived, correct?" he replied, "It appears that the sink has not been cleaned." *Id.*

A positive reaction to the reagent by way of luminescence does not necessarily indicate the presence of blood; a number of items can trigger a *false* positive including typical bathroom cleaning supplies. (RR 5 – 145). He did not recall whether human and animal urine caused false positives[70]. If there is luminescence, that is the beginning of the process, not the end of it. (RR 5 – 145-146). In the event of luminescence, the area would be swabbed for the possible presence of DNA and sent to the lab for confirmation. (RR 5 – 145-146). If the swab contains DNA of a particular individual, that would not necessarily confirm the presence of *blood*; a host of other bodily fluids could be present such as saliva, skin cells, semen, etc. *Id.* And even if the sample is determined by laboratory analysis to be the blood of a particular individual, that does not establish *when* the blood made contact with the area that was swabbed. (RR 5 – 147). It is likely that a homeowner's blood would be present in his

[70]Later testimony established that very fact. *See, infra.*

or her own sink which could have originated from a cut, a toothbrush, menses, etc. *Id*.

Carpenter agreed that "when the dust settles we don't know *when* the bodily fluid came to be on the surface that [was] tested." (RR 5 – 147-148) (Emphasis added.) He never saw any blood on the sinks. *Id*. He acknowledged where a complainant is killed in a home and the murderer has the complainant's blood on him he would be "particularly interested in ... finding the blood of the deceased somewhere in the area where there's been a washing." (RR 5 – 148). And, he would expect if someone committed a murder and had not left the house to clean up, that they would have cleaned up in the house. (RR 5 – 25-26).[71]

Although the prosecution alluded to a mop and bucket in the dining room area repeatedly throughout the trial and offered 9 photographs of the same into evidence–insinuating that Sandy could have cleaned up the scene after allegedly killing her husband–Carpenter chose *not* to test the bucket, mop, or water in the bucket with reagents, nor did he think it was relevant to collect the mop. (RR 5 – 46-

[71]Detective Dousay asked Sandy if she left the house after she and Jaime got into the Jacuzzi; she responded that she had not. (RR 8 – 73). On cross-examination, Dousay testified that **based on the HCSO investigation no credible evidence was received that Sandy ever left the house that night**. (*Id.;* State's Exhibit 673, 22:35:29).

47; State's Exhibits 76, 78-85). He agreed one would expect bleach to be in a bucket with a mop to clean dog urine and feces.(RR 5 – 47).

There was nothing "amiss" in the laundry room, the washing machine "tub" revealed nothing incriminating; no bloody clothing was found in the hamper or was seen anywhere in the house, except for clothing in Jaime's closet. (RR 4 – 97; 5 – 140-152, 154-155).[72] Carpenter did a "detailed observation" of the clothes in Sandy's closet and didn't see any blood on clothing or on anything else in Sandy's closet. (RR 5 – 154, 162).

Carpenter could not recall whether he bothered to look inside the Infiniti or Jaime's truck; and although he was aware that fluorescein can be used both inside

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[72]A white blouse was recovered from the Jacuzzi–State's Exhibit 577. (RR 5 – 159). Carpenter did not know who owned it. *Id.* Although it was a size "medium", neither he (nor any other law enforcement officer) checked Sandy's clothes to determine her size. (RR 5 – 160; 8 – 116-117). He saw several spots on the blouse that could possibly be blood so he treated those with the reagent fluorescein and got a reaction. *Id.* (RR 4 – 177). Samples of the material from the shirt were submitted to the lab for analysis; ultimately either no DNA results or insufficient information for interpretation was obtained. (Defense Exhibit 23 at 8).

In addition, two towels (State's Exhibits 575 and 577) were admitted into evidence. (RR 4 – 175-176). These items, however, were never submitted by Carpenter to the laboratory for any analysis. (Defense Exhibit 23-1 through 3).

(steering wheel, gears shift, ignition switch) and outside of vehicles (door handles), no evidence was offered that any such analysis was done. (RR 5 – 152-154).[73]

2. DNA

a. "Touch" DNA and fingernail scrapings–none of Jaime's DNA is found on Sandy and none of her DNA is found on him

Carpenter took 37 swabs for DNA from surfaces he deemed pertinent including swabs for touch DNA–places that a person has touched, including objects or another person. (RR 4 – 46-47; 5 – 80, 168). Both of Sandy's hands were swabbed to determine "[i]f there's any possible blood or DNA on her hands from someone else." (RR 5 – 168; Defense Exhibit 15, Items HS1 and HS2).

In addition, scrapings from under Sandy's and Jaime's fingernails were taken to be analyzed. *Id.;* Defense Exhibit 15, Items FS1 and FS2. Carpenter agreed that the perpetrator could get the victim's skin underneath his nails during an attack and/or the victim in defending himself could get the perpetrator's skin under his nails. (RR

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[73]This is extremely significant because there was no evidence that Sandy cleaned herself up. In final argument, the prosecutor acknowledged that the killer "would have had to have been very, very bloody." (RR 13 – 165). She also argued: "she (Sandy) had a lifetime to get rid of her clothes, to wash herself up, to get ready for the big finale of tying herself up." (RR 13 – 165). And yet, **no evidence from the scene establishes any of this conjecture.** It is simply elementary that an examination of the vehicles should have been undertaken with chemical reagents to determine if there was any indication of the presence of blood. It would have been impossible for Sandy to have left the scene in a vehicle and not leave traces of blood, if, in fact, she was the killer who, by everyone's agreement, would have to have been "very, very, bloody."

5 – 167).[74] There was no blood underneath Sandy's fingernails that he "could visibly observe" which is why the scrapings were taken "in order not to miss anything." (RR 5 – 175). Both Sandy and Jaime had their respective hands bagged by investigators. (RR 6 – 109).

b. Law enforcement fails to swab or process the bloody handle of the safe in the closet next to Jaime's body despite Carrizal's misrepresentation to the contrary

Jaime's body was found in the closet next to a safe. Inexplicably, what appeared to be a **bloody** fingerprint on the safe handle *was never processed* by law enforcement despite the fact that lead detective Carrizal told others and misrepresented in his offense report that processing had occurred. (RR 10 – 120-121). As it turned out, Carrizal never discussed this with Carpenter and no processing was ever conducted for DNA or fingerprints. (RR 10 – 124; 5 – 87-89, 91). Carrizal confirmed that on *February 8, 2013*, Mr. Oweyssi, an attorney for Sandy, provided him images of the safe which had possible blood stains on the handle. (RR 10 – 118). *See* State's Exhibits 441-446.[75] Approximately four weeks before trial, the prosecutor

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[74]As will be discussed, *infra,* forensic analysis showed that no DNA other than her own DNA, was found under Sandy's nails and no DNA other than Jaime's own DNA was found underneath his nails.

[75]Detective Dousay told Sandy "we have checked your house over real good." (RR 8 – 122). (continued...)

showed Carpenter these identical images of the safe handle; from these close ups, he determined that there was no fingerprint on it. (RR 4 – 155). He was unaware that the *very same* photographs were possessed by Carrizal *as early as February 2013*. (RR 5 – 90).

On cross-examination, Carpenter agreed the safe was on the floor, as were the keys, where it could be readily seen by anyone in the closet. (RR 5 – 87; State's Exhibit 446). He acknowledged that in his offense report he entered: "[t]here was *what appeared to be blood on the handle of the safe.*" (RR 5 – 87-88) (Emphasis added).[76] When asked if he thought this was handled appropriately, he stated, "[t]he blood on the safe would have *probably been Sandra Melgar's.*[77] So if that would have

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(...continued)
Obviously not that "good", it is submitted, when basic, rudimentary crime scene investigative methodology on a potentially essential piece of evidence was not employed.

[76]Deputy Rossi, an expert witness called by the prosecution, confirmed that there was a blood stain on the handle of the safe but she did not see friction ridges; she opined that it was a "swipe pattern" indicating "relative movement" and something bloody coming into contact with the handle.(RR 9 – 65).

[77]It is not clear whether Carpenter misspoke when he answered the blood "would have probably been **Sandra** Melgar's, as opposed to Jaime's. In any event, either way his answer is problematic for the State. If he actually meant to say "Sandra Melgar", the fact that her blood may have been on the safe handle would certainly have been something law enforcement would have wanted to confirm notwithstanding the fact that there was no evidence from any source which showed she had been bleeding. If he meant to say "Jaime Melgar", that would tend to show that Jaime may have attempted to open the safe *after* he was injured and bleeding but before he was murdered–perhaps at the behest of his attacker(s).

(continued...)

been swabbed, it would have been Sandra Melgar's blood on it." *Id.* (Emphasis supplied.) When pressed and asked,

> [I]sn't it fair to say that in retrospect that was a mistake that any time you're on the scene of a murder with a dead person 2 feet from a locked safe, and you see what you believe to be blood on the handle, you would certainly test it just to make sure that it doesn't come back to the murderer....Isn't that a fair statement?"

he replied, "That could be a fair statement, yes." (RR 5 – 92). Finally, when asked, "*As you sit here today, you cannot tell our jury that that wasn't possibly very consequential evidence that they now can't consider, you can't tell them that, can you*?" he stated, "*No*." *Id.* (Emphasis added.)

V. Examination of Sandy's body and clothing

A. Sandy voluntarily executes consent forms

Sandy was cooperative as Carpenter took photographs of her. (RR 4 – 205; *See* State's Exhibits 515-538 depicting her hands, arms, back, and Sandy standing with her cane. She also voluntarily signed consent forms permitting law enforcement to take any evidence from the house and from her in the form of buccal swabs, swabs

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(...continued)

Carpenter's willingness to assume ***whose*** blood ***probably*** was on the safe handle stands in stark contrast to his earlier testimony that as an investigator, unless he had first hand knowledge concerning a matter, he would be speculating. Earlier when asked, "**You want to make sure you have personal knowledge about facts and not offer supposition or hypotheses, fair statement**?" he replied, "**Fair.**" (RR 4 – 188) (Emphasis added.)

of her hands, and fingernail scrapings. (Defense Exhibits 4 and 5; RR 5 – 116-121; RR 10 – 26).

B. Evidence on Sandy's hands is inconsistent with her being the murderer

Carpenter agreed when investigating a stabbing it is "particularly important" to examine and preserve the condition of a suspect's hands (and any evidence on a suspect's hands) by placing them in bags shortly after contact is made. (RR 4 – 208; RR 5 – 162). State's Exhibits 533-538 are photographs taken by Carpenter of Sandy's hands shortly after his arrival. (RR 4 – 207; 5 – 161, 170-171). Defense Exhibit 1944 was the first photograph he took and it depicts Sandy's bagged hands. (RR 5 – 165). Although the prosecutor offered these photographs into the record, she intentionally did *not* question Carpenter about State's Exhibits 534 and 536, nor did she "publish" or show the jury those photographs which depicted the *palmer* or *inside* of Sandy's hands. (RR 4 – 166). This was done, no doubt, to de-emphasize the fact that there were *no cuts, bruises or injuries to the inside of Sandy's hands* which is very common in assaults and homicides committed with a knife. (*See discussion*, *infra.*) Carpenter closely examined Sandy's hands checking for such injuries. (RR 5 – 171, 174, 180-181).

He acknowledged on cross-examination that repeated thrusts or "stabs" by a perpetrator can result in blood getting on the handle, causing the knife to become

slippery, and the perpetrators's fingers to slip under the blade. (RR 5 – 171). He agreed he was very interested in knowing, especially in a stabbing investigation, whether or not the alleged perpetrator had those injuries on the inside of their hands. *Id*. **And Sandy did not.** (RR 5 – 171; Defense Exhibits 1948, 1949).

State's Exhibits 533 and 535 depicted the *dorsal* or outside of Sandy's hands which showed not only the absence of injuries or bruises but also that Sandy's long fingernails **were all intact**–an amazing feat if she truly was the killer–in light of the nature of this brutal, and savage attack and the fact that, as the medical examiner established, Jaime sustained over fifty (50) blunt force and sharp force injuries. On the *outside* of Sandy's left[78] thumb was what Carpenter described as a "small scratch." (RR 4 – 172).[79] He did not know when or how it occurred or if Sandy was right (or left) handed. (RR 5 – 173). In reviewing the photographs of Sandy's hands–Defense Exhibits 1948, 1949, 1952 and 1954– and notations in his report, that was the *only* injury to her hands. *Id*. The prosecutor adduced no evidence from any

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[78]Carrizal erroneously asserted in his offense report that the scratch was on Sandy's *right* thumb. (RR 10 – 40). Carpenter agreed he never documented a scratch or cut on Sandy's right thumb because there wasn't one. (RR 5 – 172).

[79]Carpenter characterized it as a small scratch but on cross-examination called it a "small cut." (RR 4 – 172, 5 – 168). When asked if he had used the word "scratch" the day before in describing it, he couldn't recall. *Id*. In fact, he did: "There's a small *scratch* on her thumb." (RR 4 – 172) (Emphasis added).

source, including the medical examiner, which established the age of the scratch or its possible cause, nor was any argument asserted by the prosecutor or any witnesses that the scratch had any relevancy to this case.

When shown Defense Exhibits 1948, 1952 and 1954–depicting Sandy's fingernails–Carpenter agreed they were long enough to break and for blood to get underneath them. (RR 5 – 177).[80] He acknowledged it is possible for a person to have bruising on their index finger by repeatedly stabbing someone causing their index finger to contact the hilt of the knife. (RR 5 – 180-181). He saw *no such bruising as to Sandy*. *Id*.

C. Bruises on Sandy's body are consistent with her being bound and assaulted but inconsistent with her being the murderer

Contrary to the testimony of Stephanie Roberts, the EMS tech who examined Sandy at the scene and insisted she had no bruises on her body, that proposition is contradicted by the evidence. Even Carpenter acknowledged seeing bruises on Sandy's forearms and biceps. (RR 4 – 166; State's Exhibits 523, 524, 528, 529, 530, 531and 532 (forearm) and 525, 526, 527 (biceps); State's Exhibit 2640). The

[80]In closing argument, the prosecutor speciously asserted, without any evidentiary support, that one of Sandy's fingernails appeared (at least to her) to be "cloudy"; this purportedly established that Sandy must have washed her hands with a particularly harsh cleaning compound in an effort to rid her hands of Jaime's blood. (RR 13 – 166-67). As will be demonstrated herein, that assertion was made in bad faith, without any evidentiary support, and, in fact, contrary to the evidence. *See discussion infra*.

prosecutor questioned Carpenter for a scant single page regarding bruises because it was contrary to her narrative and theory of the case. (RR 4 – 166).

Bruising on Sandy's left biceps, (as later testimony would show), was consistent with her having been grabbed from behind and wrenched up as she was being tied with her arms behind her back by the unknown assailant(s). (*See discussion*, *infra.*).[81] On the other hand, if the bruises were caused by Jaime grabbing Sandy's upper arm to stop the stabbing, utterly no effort was made to swab for touch DNA to confirm that hypothesis. In any event, no testimony was adduced by the State nor was any argument made, that the bruises on Sandy's biceps were caused by Jaime "grabbing" Sandy. Although the detectives alerted Carpenter to document this, they did not direct him to swab for possible DNA. (RR 5 – 170; State's Exhibit 673, 01:04:07).

More importantly, the bruising on Sandy's forearms was consistent with and corroborative of the testimony of Herman and Maria Melgar who found her bound tightly with her arms behind her back. *See discussion*, *supra*. The ties were around

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[81]The prosecutor never showed Dr. Pinneri, a trained and experienced forensic pathologist, any of the photographs of Sandy's bruising, much less, asked her (at least in the presence of the jury and defense counsel) what her opinion was as to their possible cause or age. It can be fairly assumed this was carefully calculated on the prosecutor's part, no doubt, due to the fact that Dr. Pinneri's opinion was not helpful.

her arms from her wrists up her forearms–*not exclusively on her wrists*. (RR 9 – 161, 163-164, 204-206, 208-209). This explains why responders testified they didn't see red marks on Sandy's wrists. State's Exhibits 528 through 531 *clearly* show red marks across the top and side of her forearm. State's Exhibit 530 and Defense Exhibit 1960 were taken by Carpenter, clearly showing a red elongated mark across Sandy's forearm highlighted by a ruler. However, the prosecutor chose *not* to ask Carpenter about State's Exhibit 530, nor did she "publish" or show it to the jury. (RR 4 – 166). Even Carpenter acknowledged the injuries visible in Defense Exhibit 2637 (redness on Sandy's left forearm just above the wrist). (RR 5 – 178).

Finally, Defense Exhibits 29 and 30 document bruising on the right side of Sandy's face. These photographs were taken by Elizabeth Melgar shortly after arriving in Houston on December 26, 2012. (RR12 – 53-54). *See discussion*, *infra.* State's Exhibit 515 depicts the same.

D. Law enforcement wholly fails to examine Sandy's clothes for potential evidence (or the lack thereof)

As will be discussed in greater detail, *infra,* Sandy was transported without shoes for interrogation and was returned to her home at 4:20 a.m. on December 24th. (RR 4 – 210). Upon returning, Carpenter retrieved Sandy's lingerie and the robe she was wearing. *Id.* Inside a robe pocket was a tissue, eye drops, eye cream and lens

drops. (RR 4 – 180). Carpenter documented these items in his evidence log but none were submitted for analysis. (RR 5 – 56).

VI. Law enforcement immediately focuses on Sandy

A. Detectives arrive and make up their minds before asking Sandy any questions

Sgt. Dousay, a homicide investigator, arrived at the scene on December 23, 2012 at approximately 5:50 p.m. (RR 7 – 27-28, 102, 105). He was *not* the lead investigator; Carrizal was. (RR 7 – 104-105).[82] Dousay first inquired about a neighbor's security cameras, and quickly learned that Sloan Essman's footage only captured *his* driveway, not the Melgar's property. (RR 7 – 105,107). Dousay admitted on cross-examination that when questioning Sandy, however, they lied and told her the "neighbors had video cameras and one gets your house pretty well." (RR 7 – 107; 8 – 114). That was the first of many lies. Lead Detective Carrizal arrived at

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[82]Interestingly, Carrizal's name was never mentioned during Dousay's direct examination; nor did the prosecution call him as a witness, no doubt due to his work-related egregious misconduct, sloppy investigation, and utter lack of candor and truthfulness. See *discussion*, *infra.* As it turned out, Carrizal and Dousay were childhood friends. (RR 7 – 104).

Defense counsel was compelled to call Carrizal and the prosecutor disingenuously contended that she should be able to lead him because he was "adverse" and "not a friendly witness." (RR 10 – 153-163). Wow. *Any* fair reading of the record establishes that it was "sheer sophistry" for the prosecutor to suggest that Carrizal was adverse when, in fact, he was irrefutably "a team player". (RR 10 – 156).

the scene at 6:56 p.m. (RR 10 – 7). His job was to assign tasks, coordinate the investigation, and collect all evidence. (RR 10 – 6-7).[83]

B. Sandy's interrogation--the detectives' mission to fit the facts into their "theory"

Sandy was cooperative, compliant, and not formally questioned at the scene. (RR 7 – 40-44). According to Dousay, she was not considered a suspect, was not in custody, and not "going to jail right then". (RR 7 – 41-42). According to official records from the HCSO Communication Division, Sandy arrived at Lockwood around

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[83]Any fair reading of his testimony reflects a very disengaged "lead investigator". He failed to memorialize many aspects of the investigation and could not remember if tasks were accomplished. 911 telephone calls were never produced; Carrizal didn't know if they were even preserved. (RR 10 – 13). He erroneously noted in his offense report that the Infiniti was parked on the *right* side of the garage. (RR 10 – 23). He never checked the interior of Jaime's truck and could not say if the garage remote was inside it, nor did he know if the CSU inspected it. (RR 10 – 24-25).

He never interviewed crucial witnesses including EMTs and Herman and Maria Melgar; moreover, he never bothered to review those witnesses' recordings or reports. (RR 10 – 25-26). He could not recall that Sandy had no criminal history, nor any domestic violence calls involving her and Jaime. (RR 10 – 28, 33).

Amazingly, he ultimately admitted that in all probability, he had ***not*** read the offense reports generated by other team members. (RR 10 – 38-39, 189). He could not confirm whether fingernail scrapings had been taken from Sandy. (RR 10 – 38-39). He agreed it was important to accurately document his offense report and begrudgingly conceded that although he made a notation that Sandy had a cut on the *right* hand by the thumb, the scratch was actually on her *left* thumb. (RR 10 – 40). *See* testimony of M.V. Carpenter, *supra.* He didn't know if Jaime was stabbed in the back but claimed he had read the autopsy report. (RR 10 – 47).

He didn't know if trace evidence was obtained nor did he know the results of the forensic computer examination of the Melgar's cell phones and computers. (RR 10 – 50, 129). Although he began the investigation on December 23, 2012, he didn't pen his first offense report supplement until *July 1, 2013*. (RR 10 – 145).

9:30 p.m. (Defense Exhibit 10 at 5). She was immediately ushered into a windowless room with a camera pointing down on her and was flanked in the corner by Carrizal and Dousay. (RR 7 – 128). This was intentional; the Reid Interrogation Technique was used,"where you got the person kind of cornered." (RR 7 – 128).

A transcript was made of the audio-video recording of the interrogation (State's Exhibit 673).[84] What follows is an overview[85] of Sandy's interrogation and Dousay's examination before the jury:

- Sandy told the detectives that she and Jaime went to dinner to belatedly celebrate their anniversary. After dinner Jaime drove to CVS to purchase sodas for cocktails; they were planning to get into their Jacuzzi. He opened the garage door on the left and drove into the garage; Sandy got out of the car first and went inside the house through the interior garage door which was not locked. She assumed Jaime closed the garage door behind him but wasn't certain since she went inside first. She believed he made two trips into the house because he brought in two large bottles of soda and the dinner left-overs which were in the backseat;
- They got into the Jacuzzi for approximately two hours. They took liquor, mixers, strawberries and cool whip to the bathroom. They reminisced about their life, talked about their daughter as well as travel plans, and

[84]The transcript which contained several errors was not offered into evidence but the video recording (State's Exhibit 673) was admitted and played during the detectives' examinations. References herein to statements will be to the appropriate page and volume of the court reporter's record where applicable, as well as to State's Exhibit 673. A "time stamp" reference to the pertinent passage in State's Exhibit 673 is provided by the undersigned counsel to assist the Court in viewing and listening to the recording.

[85]In the sections below, specific citations to the record including the audio-recording are provided.

made love. They spoke about how much they loved one another. They got out of the Jacuzzi. (Sandy used the bathroom and Jaime got ice, and then got back into the tub);

- Later that evening, Sandy believed the dogs (four, including puppies) were barking, at least that is what Jaime said. The windows to the backyard were behind the Jacuzzi. Jaime got out, wrapped in a towel, slipped into Sandy's slippers and went to get the dogs. After about 15 - 20 minutes, he had not returned; Sandy got out of the tub and got dressed. The Jacuzzi was running loudly. She went into her closet and put on a nightgown and panties; she sat in her chair which she kept in her closet facing the door and put on her "booties" or socks and applied lotion to her legs.
- That was the last thing she remembered until waking up in the closet. She thought she may have had a seizure because her muscles hurt and she had difficulty moving; she fell back asleep. When she later awoke, she realized that she was tied up and her head hurt; her legs cramped. It felt like she had a seizure or hit her head or got hit in the head. (Sandy had a documented history of epilepsy and had been experiencing auras ("mini seizures") for about a month before Jaime's murder.) She did not know the time or how long she had been in the closet. At some point, she heard the dogs outside her closet door.
- After being tied up for hours (approximately 14), she heard Herman Melgar's voice and yelled out to him. Herman was able to get the door open. He attempted to untie her but she was tied too tightly. With Maria Melgar's assistance, they finally cut her loose. Sandy immediately asked where Jaime was and went to look. While walking through the master bedroom, she saw his legs sticking out of his closet and ran to him. She checked for a pulse. She cried hysterically and did not know what had happened and had very little memory of events.

1. The open garage door thwarts law enforcement's theory of "no forced entry" so detectives embark on a mission to get the garage door closed and the interior garage door locked

There were few issues more important to a fair resolution of this case or more contentious than the open garage door. The fact there were no breached exterior doors or broken windows led investigators to immediately focus on Sandy as the killer and recklessly conclude there had been no intruder(s) (and the scene was possibly "staged"). When the prosecutor asked Dousay whether it was "pivotal" in the investigation that the garage door was open or closed, he stated it was "monumentally important". (RR 7 – 51). Therefore, it was paramount in conducting a neutral and objective investigation to get to the bottom of the open garage door.[86] But that didn't happen. Instead of asking open-ended questions, the record irrefutably establishes

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[86]Dousay agreed that the garage door was open before police arrived. (RR 7 – 117). Carrizal never bothered to interview Ms. Essman or listen to her recorded interview; she provided information that the garage door was seen open at 7:30 a.m. on the morning of December 23, 2012. (RR 10 – 60-62). She provided to officers the name of neighbor, "Scott", who saw the garage door open earlier that morning. (RR 10 – 62). After searching his offense report supplements, Carrizal agreed no entry reflected that any officer ever bothered to find, let alone interview, Scott. (RR 10 – 62). (In fact, as reflected below, Scott Lacy was interviewed but it wasn't documented. Was that because the earlier the garage door was found to be open would undermine their theory that this couldn't be a home invasion?)

The defense called Scott Lacy who confirmed that between 7:15 a.m. and 7:30 a.m., while walking his dog, he noticed the Melgar's *left* garage door up; he had seen one of the garage doors up "[q]uite a few times." (RR 10 – 236; 11 – 7). Lacy's recollection was that the left side was open but he wasn't 100 percent certain; it could have been the right. (RR 11 – 9). He was interviewed by a law enforcement officer at the scene and told him that he saw the garage door open at 7:00 a.m. (RR 10 – 236).

Odile Robertson, the Melgar's next door neighbor, confirmed that Jaime had a bad habit of leaving the garage door open. (RR 7 – 18). She acknowledged telling defense counsel's private investigator that "**Jim always left the garage door open**." *Id.*

that leading and suggestive questions[87] were employed. Moreover, Sandy's answers were often cut off by the detectives (at least 35 separate times) as she tried to answer their questions.

This was especially the case regarding the open garage door. To add insult to injury, Dousay asked Sandy *two* questions in the same sentence but received only one response and never bothered to seek clarification. He literally force fed her the response he wanted as the following colloquy demonstrates:

Dousay: [Y]a'll pulled in there around midnight. Did *you* close the door?

Sandy: I went in first.[88]

Dousay: Umm, huh.

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[87]Dousay disingenuously contended he did not ask leading questions. (RR 8 – 69-70) Carrizal, on the other hand, admitted that they did. (RR 10 – 214). Any objective review of the questioning throughout Sandy's interrogation belies Dousay's contention and establishes he was not being truthful. *Id.*

[88]The prosecutor contended that Sandy did not answer Dousay's question but Dousay never suggested he was of that view; he asked follow up questions that focused on whether Jaime closed the garage door. Sandy went into the house first and did not know if Jaime closed the garage door although she assumed he had. The same "she didn't answer your question" ploy was played by the prosecutor with respect to whether Sandy told Dousay if she had eaten strawberries. (RR 7 – 56). In fact, Sandy told Dousay on two occasions that she ate a strawberry. (State's Exhibit 673, 21:55:32, 00:45:26).

Sandy: [H]e (Jaime) had the couple ... a couple bag ... well, our doggie bags [89] and what we got at CVS to get. So, I think he made two trips. *I don't remember him closing it*. I went and go...I grabbed the drinks and went to the tub in the (cut off)

Dousay: I mean he'd have to close the door behind the Infiniti. *It was closed tonight; right?* [90]

Sandy: Yeah.

Dousay: *It was closed—it was closed.* [91] So what about the other garage door? [92]

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[89]No effort was made to check the refrigerator to confirm (or refute) Sandy's statement. (RR 8 – 63).

[90]This is the sentence containing two questions; both are leading and suggestive. At least Dousay admitted it included t*wo separate inquiries* and the trial court stated the record would reflect that two questions were asked in the same sentence. (RR 8 – 65). When asked, "Is she saying yeah to 'I mean, he'd have to close the door behind the Infiniti,' or yeah to 'It was closed tonight, right?' 'Yeah'?, he responded, "**I don't know.**" (RR 8 – 66) (Emphasis added). (Carrizal, also said he didn't know which question Sandy was responding, "Yeah" to. (RR 10 – 215)).

Although Dousay maintained "[i]n the next question" he sought to clarify her answer, the record is to the contrary. (*Id.,* RR 8 – 66*).* In fact, his next question is not a question but a declaratory statement on his part: "*It was closed–it was closed*." (RR 8 – 66) (Emphasis added). As Dousay admitted, after *he* said "[i]t was closed. It was closed", he did *not* ask her to comment or to affirm it. (RR 8 – 67). He simply changed the subject to the right garage door which was closed when they arrived home from dinner. Although the prosecutor and Dousay contended Sandy changed her story, Dousay reluctantly conceded that Sandy never changed her initial statements that she went into the house first and "I don't remember him closing it" at any time. (RR 8 – 68-69).

[91]This declarative statement evinces a desire to control the narrative and suggest answers in order to fit his theory of no forced entry.

[92](State's Exhibit 673, 21:51:00-21:51:50) (Emphasis added).

On cross-examination, Dousay acknowledged that what Sandy was saying was: she didn't know if the garage door was closed and did not know if Jaime closed it because she went into the house first and wasn't there when it was or was not closed; and Jaime may have made two trips into the house. (RR 8 – 57-58, 62, 65). He admitted she clearly was telling him that she didn't close the garage door. (RR 8 – 65). The subject was broached again in the interrogation. (RR 8 – 70-71). Sandy said she did not know why the right garage door was open and, when asked, she said the doors could be activated by "clickers" in the vehicles. (RR 8 – 71). Dousay admitted he never verified if "clickers" were in the vehicles. *Id.*

On cross-examination, Dousay confirmed Sandy's responses were consistent with her previous answers and he was, in fact, asking leading questions. (RR 8 – 74). In the interrogation, Dousay asked for the third time, "... just that door (left) was open and he closed it?" Sandy, again, stated, "Well, I went in; I'm sure he closed it. But I went in before he closed it cuz he went back out to the car to get ah, we had the stuff from CVS and we had some dinner left-overs." (State's Exhibit 673, 00:29:38-00:30:00).[93] Dousay confirmed that Sandy never said that she saw the garage door

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[93]The prosecutor contended that defense counsel was "misleading" the jury by not asking Dousay about Sandy's statement in the next line of the recording; however, Sandy's statement in that regard was in response to Dousay's questioning about the *other* garage door. (State's Exhibit 673, (continued...)

actually close after she and Jaime drove into the garage because she went into the house first. (RR 8 – 77-78).[94]

Dousay's partiality and result–oriented investigative technique was exemplified when interviewing Marissa Melgar, on December 23rd. During his recorded interview of Marissa regarding the **interior garage door**, he stated, "So your dad went into the garage and ***the door wasn't unlocked.***" (RR 7 – 120-122) (Emphasis added). Marissa responded, "I don't know", because she hadn't gone into the garage. *Id*. Later in the interview, Dousay returned to this theme. (RR 7 – 121). Marissa's interview was played by defense counsel to refresh Dousay's recollection. He was then asked: "Why would you say to her that you know the front door was locked, **the interior door–the interior door to the garage was locked--**when in fact she told you only a few minutes before that she didn't know *whether the interior door was locked or not?* Why would you say that?" (RR 7 – 122) (Emphasis added). All Dousay could muster

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(...continued)
00:30:00). In fact, the prosecutor misled the jury and trial court with this specious objection.

[94]The prosecutor contended these statements were confirmations by Sandy that the garage doors were closed but that, too, is belied by the record. (RR 7 – 70, 80, 87). Actually, it was Dousay, on the heels of lying to Sandy about the neighbor's camera "that gets your house real good", stating: "[Y]our front door was locked, your back door was locked. Nobody came through the garage door." (State's Exhibit 673, 22:16:55). Sandy's response: "Okay" and "Umm, uh"–hardly confirmed the garage door was down.

was, "I do not know." *Id.* This is the very witness who wanted the jury to believe he was objective, open-minded and didn't jump to conclusions. (RR 7 – 115).

2. Time–Sandy's inability to be precise as to estimates of time is used against her to contrive "inconsistency"

The prosecution posited that Sandy was "inconsistent"[95] in discussing "time" but a fair consideration of her answers demonstrates, she was very consistent in telling the detectives that she was not clear when certain events occurred or how much time elapsed; she told them she was *estimating* time or was "guessing." (RR 8 – 50-51). When asked when they went to dinner, she replied, "Maybe about 8:00. I mean, I'm just guessing. I don't know." *Id*. She stated that she and Jaime stayed at Los Cucos "a long time. We got home about midnight," but added, "*I'm just guessing that. I don't know?*" (RR 8 – 51, 59) (Emphasis added). On cross-examination, Dousay acknowledged this was not a particularly good guess based on CVS and Los Cucos receipts and her estimation was "[p]robably off." (RR 8 – 59-60).[96]

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[95]Dousay testified questions were repeated to clarify Sandy's answers and better determine what she could recall. (RR 8 – 55-56). Some answers never changed; some answers regarding time and other matters changed depending on the questions. *Id.*

[96]It does not make sense that Sandy would intentionally mislead investigators about this time line knowing receipts documented everything.

She told the detectives they got into the Jacuzzi "for a while" but "I don't keep track of time...sometime after we finished dinner about"; Sandy was cut off and Dousay stated, "Went to dinner at 8?" (RR 8 – 58; State's Exhibit 673, 21:49:43). She responded, "No, about–was it 8–maybe 8. We just stayed there a long while." (State's Exhibit 673, 21:49:43). When asked how long they talked in the Jacuzzi, Sandy responded, "I'd say about two hours." (RR 8 – 53). When asked when Jaime got out to check on the dogs, Sandy replied, "*I wanna say* one or two in the morning." (State's Exhibit 673, 21:59:53) (Emphasis added). When she was asked how much time passed between Jaime getting out of the Jacuzzi and Sandy getting dressed, Sandy indicated, "I don't know," "*[a]bout* 15 or 20 minutes." (RR 8 – 53-54) (Emphasis added). Sandy was asked how long she stayed in the Jacuzzi after Jaime got out (but before she went to get dressed) and she estimated "[m]aybe about five minutes." (State's Exhibit 673, 00:49:06). When she awoke in the closet she did not know how long she had been out; there was no clock in the closet. (RR 8 - 55).[97]

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[97]Sandy told the detectives she awoke several times while in the closet and fell back asleep; but she never told them that she was unconscious for 14 hours. This gross misstatement of the evidence made by the prosecutor was objected to by defense counsel. (RR 12 – 121). (Q: "And yet because she had a seizure, which resulted in her blacking out and *not being able to move or come to consciousness for 14 hours*, she didn't go to a neurologist?") (Emphasis added.) *Id.* Even by the prosecutor's own recollection of the evidence, Sandy told detectives she woke up at least twice. (RR 12 – 123).

Tellingly Dousay admitted on cross-examination that he did not recall if there was a clock in the closet. *Id.*

3. Jaime gets out of the Jacuzzi to check on the barking dogs and never returns

The prosecutor mischaracterized Sandy's statements about her dogs, claiming Sandy brought it up. (RR 7 – 57). While Sandy mentioned the dogs, it was in response to Dousay's question, "Then what happened?" (State's Exhibit 673, 21:55:43). Sandy said Jaime got out of the Jacuzzi because "I think the dogs were barking a lot." *Id.* Although the subject of barking dogs came up again, the detectives brought it up several times *themselves*. (State's Exhibit 673, 21:55:50, 22:00:27, 00:48:56, 00:56:22). Dousay confirmed Sandy never contended the dogs barked constantly from 10:00 p.m. to 2:00 a.m. (RR 8 – 106).[98] Sandy said the dogs "were right outside our window." (State's Exhibit 673, 22:00:28; State's Exhibit 2386; RR 8 – 107-108).[99]

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[98]This is important because the prosecutor posed a hypothetical based on erroneous assumptions to neighbor Robertson: if she would have heard the dogs barking from *10:00 p.m. to 2:00 o'clock in the morning*." (RR 7 – 22) (Emphasis added). Ms. Robertson replied, "I *think* so." *Id.* (Emphasis added). She explained, "I mean, it's a long period of time. It's like, if it's five minutes, it's one thing. If it was a long time, I *may* have heard them...." *Id.* (Emphasis added).

[99]Ms. Robertson testified that she and her husband on occasion heard dogs barking while in their backyard. (RR 7 – 13). They sometimes barked when she was trying to go to sleep or sometimes woke her up. (RR 7 – 13). She acknowledged, on cross-examination, that "[w]e could assume" (continued...)

Although Dousay testified that the dogs were in the study when he arrived (RR 7 – 77), he acknowledged on cross-examination that he did *not* know where the dogs were *when Herman Melgar and his family arrived.* (RR 8 – 107). And for that matter, Dousay did not know where the dogs were when Sandy awoke tied up in the closet and heard them crying. (RR 7 – 63). The dogs were small and could come and go through a "doggie" door leading to the backyard. (RR 8 – 109; Defense Exhibit 2103).

4. The gun in the master bedroom closet–Sandy's belief that Jaime is murdered in his closet as he is trying to get to his gun

One of many good examples where the prosecutor and Dousay attempted to "misdirect"[100] the jury was how they handled Sandy's belief that Jaime may have been trying to get to his pistol when he was killed. Dousay asked,"What is your understanding? What, what has happened?" (State's Exhibit 673, 22:10:44-56).

(...continued)
there were other times that the dogs barked and didn't wake her. (RR 7 – 19). She was asked by the prosecutor if "on December 23, 2012 or the Saturday night, did you hear any dogs barking that night?" and responded, "No." (RR 7 – 14). She agreed she did not remember the dogs barking **but habitually went to bed at *9:00 p.m.*** (RR 7 – 21).

[100]Dousay opined after prompting by the prosecutor that Sandy may have tried to "misdirect"detectives–a "sign of deception"–by how she answered questions and because she looked down at times and then would look up. (RR 7 – 69). This is sheer and utter conjecture. In fact, Sandy was criticized for providing too little information and at other times for providing too much. She was criticized for answers that were not specific yet no follow up questions were asked. (RR 7 – 65).

Sandy said she didn't think Jaime would have opened the door to some stranger and didn't know if anything had been taken but "[h]e has a gun and I think maybe he was trying go for the gun." (State's Exhibit 673, 22:12:35-22:13:21).

The prosecutor asked, "*[I]f she doesn't know where the gun is . . . how does she know why Jaime is going for the gun? ...* " (RR 7 – 69-70) (Emphasis added). He responded he didn't know. (RR 7 – 70).[101] What the prosecutor conveniently omitted was that Sandy knew Jaime kept the pistol in the closet, but didn't know *where.* (State's Exhibit 673, 22:13:30). She told Dousay Jaime had a Beretta in the closet; and also knew that Jaime had been found murdered in the bedroom closet having seen his body there prior to the arrival of first responders. *Id*. It was logical for Sandy to think he was murdered while trying to get the pistol. *Id.*

5. "Screaming and running through the house"–a theory the detectives conjure up without any evidentiary support

One of the detectives' themes was that Sandy supposedly would have heard Jaime screaming and his killer(s) running through the house had she not been the one who killed him. (RR 8 – 114-115). That assumes whether screams, if any, could have

[101]At least Dousay conceded on cross-examination that Jaime was found brutally murdered right below where he kept his gun. (RR 8 – 113).

been heard over the loud Jacuzzi,[102] and whether, in fact, anyone ever ran in the house. Moreover, if the murder occurred while Sandy was knocked unconscious, obviously she would not have been able to hear anything.

The prosecutor offered a photograph–State's Exhibit 730 (RR 11 – 131)–which was staged and depicted a DA's Office employee sitting on the left side of the Jacuzzi, apparently to demonstrate that Sandy would have been able to see the bedroom and closet, if seated on the left. (RR 11 – 131). That assumes the door to bathroom was open at the time and that Sandy never moved. (RR 11 – 183). In fact, she got out of the Jacuzzi to use the restroom. (RR 1 – 46) (State's Exhibit 673, 01:06:44). No follow up questions were asked regarding where she sat after she got back into the Jacuzzi, or whether she at any time changed her location in the Jacuzzi either before or after they made love.

6. Sandy's limited memory of the events and the pain she was experiencing is consistent with her suffering a seizure and/or blow to the head

Sandy had numerous documented health problems including lupus, rheumatoid arthritis and grand mal seizures. When she awoke in the closet, she thought she

[102]Inexplicably, neither Dousay nor any law enforcement officer could attest how loud it was because they didn't care enough to find out. (RR 8 – 116).

may[103] have had a seizure because "my muscles hurt and my head. It was hurting real bad." (State's Exhibit 673, 21:58:00). Sandy said her legs and wrists hurt and she had "pain in her head right here." (RR 8 – 48-50; State's Exhibit 673, 21:59:09-21:59:25). She literally pointed to where her head hurt but the detectives never bothered to inspect it. (RR 8 – 48-49). Dousay admitted that Sandy often put both hands on her head and was leaning against her hand. (RR 8 – 48-49). When Dousay asked what the pain was like to her head, she responded, "Like I got hit on the head. I don't know if I fell or was pushed *or what*, but I, you know, just like all one side...this side." (State's Exhibit 673, 21:59:09).[104] (Emphasis added).

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[103]The prosecutor mischaracterized Sandy's testimony contending Sandy told the detectives that she had a seizure. (RR 11 – 155). Sandy actually said she thought she *may* have had a seizure but also said that she felt like she got hit on the head or was pushed. (State's Exhibit 673, 21:59:09).

[104]This response was twisted by the prosecutor when she asked Dousay if Sandy told Roberts or Martinez that "her head had been hit." (RR 7 – 60, 92). But Sandy was merely answering Dousay's question and telling him what the pain felt like to her head; there is no indication that either Roberts or Martinez asked Sandy any similar question.

Sandy explained she had lupus, seizure disorder, hip replacements,[105] and retrograde amnesia following a seizure where she sometimes couldn't remember things. (RR 7 – 140-142). Despite being highly relevant, no one investigated this; Dousay's "pat" answer was, that it was Carrizal's responsibility. (RR 7 – 141-142; State's Exhibit 673, 21:59:09 and 00:55:05).

Dousay asked about bruises on Sandy's *left upper arm* contending they were "wrap around" bruises. (State's Exhibit 673, 01:03:58).[106] She mentioned she slipped when getting out of the tub to go use the restroom and Jaime grabbed her by the *right* arm. (State's Exhibit 673, 01:06:17). The prosecutor mischaracterized this by asking Dousay: "So if she raises *his* arm and grabs onto him, how is that going to cause bruises on her arm?" (RR 7 – 94).

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[105]Sandy told the detectives that it was difficult for her to sit up and she was in pain when she found herself lying down in the closet; defense counsel contended that before investigators could fairly dispense with Sandy's statements in that regard they at least ought to have been open-minded enough to look into it. (RR 7 – 142). Elizabeth Melgar testified that her mother was not feeling well, was experiencing pain and taking pain medications in October/November of 2012 when she came to visit her from England. (RR 12 – 48).

[106]By contrast, Carrizal did not say the bruises were "wrap around" or how they were caused; he maintained he was simply pointing out that it "appeared to be some kind of impression on her arm." (RR 10 – 41). He, too, had to concede noting in his offense report, "finger impressions." (RR 10 – 42).

On cross-examination, Dousay confirmed that Sandy wasn't contending that those bruises were from slipping while getting out of the tub. (RR 7 – 108-110). Dousay acknowledged that Defense Exhibits 1958, 1959, 1960, 2640, 2642, 2643 depicted the bruises he saw on Sandy's arms during her interrogation. (These photographs depict the bruising on Sandy's left front biceps and the red linear mark on both of Sandy's forearms.) He did not know how she was tied up when Herman and Maria Melgar found her in the closet. (RR 7 – 111-113). Sandy asked them to photograph her ankles where she had been tied up. (State's Exhibit 673, 21:45:20). They said they would but never did. *Id.*

Sandy told the detectives she had been experiencing "auras";[107] Dousay did not know what an aura was and had no recollection of ever asking her to explain, nor did he ask her about her medications. (RR 8 – 131-132; State's Exhibit 673).[108] Had they

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[107]Sandy explained, "I have auras, ah signs that tell me I'm going to have one (seizure) and it's like memory, forgetful, more than usual." (State's Exhibit 673, 00:22:27).

[108]The prosecutor asked Dousay questions concerning Dr. Nguyen's medical records, State's Exhibit 674. (On cross-examination, Dousay admitted that he never saw the medical records before filing charges and had only seen them *recently*.) (RR 7 – 103). Entries demonstrated that Sandy's seizure disorder was "stable" between March 2008 and July 2012. (RR 7 – 97-99). **But there were no entries for the five months leading up to Jaime's murder except for September 21, 2012 where the records reflected that the clinic did not have contact with Sandy.** *Id.*

What the prosecutor chose *not* to show the jury, however, was the fact that the *same* records reported a seizure occurring on *December 22, 2012*. (State's Exhibit 674 at 91, 94). Sandy explained (continued...)

deigned to interview Paramedic Roberts they would have learned that Sandy's chief complaint was "**Aura of a seizure**." (State's Exhibit 669 at 1) (Emphasis added).

Other evidence confirmed Sandy's serious and acute conditions. The Armstrongs and Rocio Reib testified about her epilepsy,[109] lupus, rheumatoid arthritis, hip replacements, and that she had difficulty walking and used a cane. (RR 12 – 130, 237-238). Sometimes she would be bedridden. *Id.* Tammy Armstrong was familiar with "auras" which signals that a seizure may be coming and witnessed Sandy have a seizure a few months ago. (RR 12 – 133-135). After a seizure, Sandy had to sleep and would be confused and unable to recall everything. *Id*. In November- December

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(...continued)
she had not had seizures for years but had started having them again. (State's Exhibit 673, 00:53:05). Equally telling was Sandy repeatedly telling them that she was experiencing "auras"– 22:27:10, 22:27:26, 22:27:45–and one was "*about a month ago at home*." (*Id.,* 22:27:26, 22:28:00). Auras caused memory problems and forgetfulness as was confirmed by Sandy's neurologist, Dr. Leonard Hershkowitz. *See* his testimony, *infra.*

[109]The prosecutor did her best to deride Sandy's serious health complications because they were inconvenient to her theory of the case. For example, in cross-examining Tammy Armstrong, the prosecutor insisted that Sandy started seeing Dr. Hershkowitz *only after* Jaime's murder: "She wasn't seeing Dr. Hershkowitz before her husband died, so who was she seeing?" (RR 12 – 155). The prosecutor asserted, "I've got his records." *Id.* But those very records reflect the falsity of the prosecutor's assertions: within them Dr. Hershkowitz wrote to Dr. Pearce, "I had taken care of Sandy for seizure disorder for many years. However, I have not seen her in more than 10 years. She (has) had perhaps 20-30 seizures . . . They usually occur following a confusional episode."(State's Exhibit 738). In addition, the prosecutor intentionally misled the jury by stating to Tammy, "Would it surprise you that none of what you described was in the records from Dr. Nguyen?" (RR 12 – 156). Again, that assertion is false and belied by those records which chronicle a history of epilepsy, lupus, and other chronic illnesses.

of 2012, Sandy was fatigued, not feeling well; she was in discomfort and had pain from lupus. (RR 12 – 138). Rocio described Sandy's circulation problems which affected her hands making them stiff. (RR 11 – 187-188, 199-201). When her lupus flared, it exhausted her, made her joints ache and become inflamed and she did not move well. (RR 11 – 187-188).

Dr. Leonard Hershkowitz, a neurologist, testified he treated Sandy in the 90's and in 2013. (RR 13 – 8). He explained that Sandy had a history of seizures and auras and is prescribed Tegretol and phenobarbital. (RR 13 – 10, 17-18). An "aura" is the beginning of a seizure; people "can present confused". (RR 13 – 16-17). After a seizure, people frequently experience memory loss, sleep for extended periods ("postical" state), and feel pain because "everything goes to spasms." (RR 13 – 19-20).

He testified that a "concussion" is a clinical finding that someone was hit on the head or fell and hit their head. (RR 13 – 22). Symptoms are headache, dizziness, and "amnesia." (RR 13 – 23). They may not recall the event causing the concussion–known as post-traumatic amnesia. *Id.* They may experience antero-amnesia resulting in no or poor memory afterwards. (RR 13 – 24). He believed Sandy's behavior after the event was compatible with antero-amnesia. (RR 13 – 51).

He reviewed his medical records as well as Dr. Nguyen and Dr. Granda's records. (RR 13 – 26). Dr. Granda's records reflected seeing Sandy on December 27, 2012. (RR 13 – 27). She did "not remember what really happened" because she had fainted or had a seizure. *Id.* He noted,"patient has a past history of epilepsy." (*Id.;* Defense Exhibit 40). Sandy had bruises to her arms and to the right side of her face; she was nervous, upset and unable to continue to speak to Dr. Granda. *Id.*

Dr. Granda's examination revealed the presence of a lump in the right temporal-parietal region of her head–a superficial hematoma–(a blood clot underneath the skin), bruising to her arms and around the right periorbital region of her eye, small bruising on the left dorso lumbar (back), and "multiple areas of the skin with ecchymosis (bruising) and superficial hematomas." (RR 13 – 29, 31; *id*). Sandy informed him that she had been applying ice packs for a few days. (RR 13 – 31).

Dr. Granda noted, "[b]oth hands and fingernails with mottled lesions compatible with Raynaud's Phenomenon." *Id.* Dr. Hershkowitz explained that "mottled" describes "where it's dark and light. That's Raynaud in certain areas that are not getting that blood supply...because of the lupus." *Id.* Dr. Granda's assessment was "[m]ultiple bodily injuries with superficial hematomas, ecchymosis (bruising)"; his notes reflected that Sandy "[w]ill need psychiatric evaluation in the near future",

should take Lorazepam (anti-anxiety medication), and continue with her other medications for convulsive disorder and lupus." *Id.*

Dr. Hershkowitz also reviewed a number of other documents, several HCSO offense reports, a transcription of Sandy's interrogation, and Cy-Fair EMS records. (RR 13 – 32-33). He was presented with a hypothetical set of facts based on these documents as well as evidence offered during trial. (RR 13 – 32-43). He was then asked:

> [b]ased on the materials you have read regarding the facts of this case, and what I have outlined for you, based upon the evidence that's been admitted in this case, do you have an opinion whether these facts are consistent with Sandy having been struck in the head and sustaining a concussion at some point after she got out of the hot tub on December 23, 2012?

(RR 13 – 43). He responded, "[t]he information would be compatible with a concussion" although he did not know if she had sustained one; based on the evidence he was presented, there "would certainly have some swelling in the head" and he would not be surprised that paramedics would not be able to feel the bump "because there's no abrasions, no hematomas that she clearly had later on." (RR 13 – 43-44). He also thought it was possible that she fell in the closet and hit her head because she had a seizure, thereby causing a concussion. (RR 13 – 44). All of these scenarios were medically plausible, but he did not know what induced the trauma.

(RR 13 – 44-45). He could not exclude the possibility that she had been hit on the head. (RR 13 – 45). Having a headache on one side and swelling on the other side of the head occurs with a contrecoup injury, very frequently observed in concussions. *Id.*

He opined that prolonged memory loss "was more in keeping with the concussion." (RR 13 – 46-47). The fact that a person awoke thinking they had experienced a seizure when in fact they had been struck on the head, would not be unusual because "[t]here's a big overlap in the symptoms: muscle pain, headaches, confusion, sleepiness...." (RR 13 – 47). A person experiencing a seizure would not have a sense of time. (RR 13 – 48).

On cross-examination, the prosecutor misstated the record by asking him, "Did you know that she (Sandy) gave two different stories about which side of the head that she was hit on, did you know that?" (RR 13 – 74). Dr. Hershkowitz replied, "I recall her thinking she may have been struck on the head. I remember that statement that she might have been struck on the head. That was her speculation." (RR 13 – 75). The prosecutor followed up: "You're not aware that she said she was *hit* on the right side, and also she was *hit* on the left side?" (Emphasis added). He responded, "I just

told you, I'm not aware of it." *Id.* Those assertions and misstatement of the evidence are belied by the record.[110]

In addition, the prosecutor attempted to suggest that Sandy's statements in her interrogation about her seizure disorder were different that what she reported to Dr. Hershkowitz. (RR 13 – 59). Consistent with her practice throughout the trial of omitting or skirting critical and established facts in her questions, the prosecutor's questions to Dr. Hershkowitz deliberately omitted that Sandy said she had been experiencing *auras*. (RR 13 – 59-67). The prosecutor directed Dr. Hershkowitz to an inaccurate transcript which omitted the word "aura" in several places and further, refused to play the recording of the interrogation despite defense counsel's objection. (RR 13 – 62-63). She parsed portions of the transcript and refused to put the entirety of Sandy's statements about her seizure disorder in proper context. (RR 13 – 65). When defense counsel asked her to "read where she [Sandy] says auras again?" (because that portion of Sandy's statement had been omitted in her questioning of the

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[110]State's Exhibit 669–Cy Fair EMS Records at 3–reflects: "Pt. reported pain to the left side of her head." EMS Robert testified that Sandy stated she woke up with a headache and that the *left* side of her head hurt. (RR 6 – 32). Sandy told Carrizal and Dousay that her head hurt; it felt like she had had a seizure, hit her head or got hit in the head. (State's Exhibit 673, 21:59:09). She explained that she had "pain in her head right here"–indicating the right side of her head. At no time did Sandy tell others that she was *hit* on both the right and left side of the head.

witness), the prosecutor replied, "Well, that's just the part I'm interested in counsel." *Id.* And, clearly it was.

7. There is no evidence from any source of domestic abuse or violence–another theory without any evidentiary basis

A favorite theme of Sandy's interrogators was the subject of "domestic abuse". At least nine (9) times the subject of domestic abuse, violence, and arguments between Jaime and Sandy was broached. (RR 8 – 82). According to Dousay, they were exploring the possibility that she had been abused "and possibly had acted ... out of (self) defense." (RR 8 – 82-83). Sandy steadfastly rejected this and was adamant that there had never been any violence between them. (RR 8 – 83, 97). Dousay had to concede that the transcript prepared by his own office noted that Sandy was *crying* as she said that Jaime was "a very good husband" and "[h]e's took very good care of me" in response to their "abuse" questions. (RR 8 – 86). And yet, he contended at trial he never saw her cry and she was not emotional. (RR 7 – 54; RR 7 – 64).

Sandy repeatedly told them that they were not arguing and she didn't lose her temper ("[t]hat's not what happened"), and even said she may stop talking to them and thought she might need a lawyer. (RR 8 – 88). They pressed on and played the "infidelity" card. Sandy explained "[w]e had a great relationship, even better lately."

(RR 8 – 90). She stated that she and Jaime had no problems, no arguments, and he never messed around with anyone. (RR 8 – 90).

Dousay asked, "[d]id he [Jaime] ever accuse you of doing that?" *Id.* On cross-examination he was asked what her response was, he replied it was, "Uh-huh," and claimed he wasn't sure if she said "yes" or "no". (RR 8 – 91).When State's Exhibit 673 was played, Dousay conceded that Sandy actually said, "No", and that the transcript was in error. *Id*. [111] Although they insinuated that Jaime was going to leave her, Dousay admitted they didn't have any information and never developed any evidence, from any source to support that. (RR 8 – 96). All the witnesses and evidence showed Jaime was "a very decent person" and had a good relationship with Sandy. (RR 8 – 95). It is clear that the investigators never developed any evidence from any source that Sandy and Jaime had any kind of problem in their marriage or that there was any kind of violence or aggression between them. (RR 8 – 96, 98; 10 – 141-143).[112]

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[111]Elizabeth Melgar visited her parents around November of 2012 and testified her parents were happy together and Sandy wasn't feeling well. (RR 12 – 49, 51; Defense Exhibit 24)

[112]At the conclusion of the State's examination of Carrizal, the prosecutor asked her "adverse witness" the following: "[F]inally, do you know whether or not there is a potential $500,000 insurance policy?" (RR 10 – 204). Defense counsel timely objected and asked to approach the bench. *Id*. The prosecutor argued Carrizal supposedly had spoken to the "insurance people". (RR (continued...)

In an effort to "crack" Sandy, the detectives told her: "We don't quit. You're going to see a lot of me. . .(and) my partner"; "[W]e go to all extremes"; "We're going to find out everything about your husband"; "We're going to talk to everybody in

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(...continued)
10 – 205). Defense counsel objected to hearsay and added that she needed to "'[b]ring a witness. I can't cross-examine numb nuts over here."*Id*. The trial court sustained the objection but allowed Carrizal to testify concerning his investigation as to whether there was insurance. *Id.* Defense counsel argued that Carrizal would not know about a $500,000 insurance policy and that the State needed to bring a witness because "cross-examination still exists." *Id.* The prosecutor responded she was not asking Carrizal "what anybody said" or any specifics "about that or what anybody" told him. *Id.* Defense counsel again objected to hearsay which was sustained. (RR 10 – 206). The trial court allowed the prosecutor to ask Carrizal if he determined that there was insurance. *Id.* Carrizal testified there was and it benefitted the defendant if Jaime died. (RR 10 – 207-208).

On re-direct examination by defense counsel, Carrizal conceded that insurance companies have a self-interest and look for any reason not to pay on a life insurance policy. (RR 10 – 208). When asked if he was trying to say that Sandy "killed her husband who she loved and you have no evidence to the contrary, had a wonderful relationship, but she killed him for the insurance money. *Is that what you're trying to tell the jury?', he replied, "No", that he was trying to tell the jury he did a thorough job which included checking on insurance. (RR 10 – 209).* (Emphasis added). He did not know how long the insurance policy had been in place or how long it had "sat there" without being altered in any way although he conceded that might be important to know. (RR 10 – 209). He did not know and was unaware that employees of HISD are afforded life insurance as part of their salary package. (RR 10 – 211). He acknowledged he had no idea about the Melgar's finances. (RR 10 – 209-210). He did not look at bank accounts or consult accountants. (RR 10 – 210). Dousay was not aware of any investigation into the Melgar's finances. (RR 8 – 132).

Mr. Belk testified it would be important to consider how long the life insurance had been in effect, look at the amount, and whether there had been any recent changes to the policy. (RR 11 – 76). The life insurance was connected to Jaime's employment for $100,000 and $233,000 with a double indemnity clause for accidental death; in his review of the records, nothing about the age, type, or value of the policy concerned him as a possible motive. (RR 11 – 77, 163).

Elizabeth Melgar testified after her father's murder Sandy was incredibly depressed, not sleeping well, wasn't eating or functioning. (RR 12 – 88-89). She took care of her father's cremation and helped pay bills even though her mother had money; "it was just something I wanted to do, something for her." *Id.* Elizabeth also contacted the insurance company "because I knew it was something that had (been) put into place over a decade prior, and I just didn't want my mom to have to worry about any of this. And I wanted to take care of her as my dad planned." (RR 12 – 89).

your neighborhood"; and "We're going to talk to everybody that you're related to." (RR 8 – 100-102). Although clearly designed to intimidate Sandy, Dousay contended these statements were made to show that they would do "[w]hatever it takes to investigate the case." (RR 8 – 101-102). Dousay acknowledged that meant they would be objective, thorough, follow leads, keep an open mind, and "scour the area and conscientiously look for any and everything that can solve this crime." (RR 8 – 103). When asked, "*Can you tell our jury under oath that that was done in this case*?", Dousay tellingly replied, "**No**." *Id.* (Emphasis added).

C. Carrizal attempts to file murder charges (even before the CSU leaves the premises) and is rebuffed by the District Attorneys Office

The evidence reflects that Sandy's "interview" started at 9:40 p.m. and ended at *1:10 a.m.* (RR 7 – 129). Both detectives claimed Sandy was then transported home. (RR 7 – 129-130, RR 10 – 149). Dousay felt comfortable telling the jury that the interview ended at *1:10 a.m.*, and shortly thereafter a scene officer took her home. (RR 7 – 129-130). However, official communications logs from the HCSO indicated that Sandy did not depart Lockwood until approximately **3:15 a.m.** (RR 10 – 152-153; Defense Exhibit 10).

Dousay acknowledged that after the interrogation the investigation was still ongoing. (RR 7 – 131-132). Latent fingerprints and DNA had to be analyzed; "to be

fair and neutral, objective and thorough" the investigators would want to know if forensic testing might show the presence of an unknown person in the house during the murder. (RR 7 – 132). When asked, "why is it then around 2:10 a.m. Deputy Carrizal is trying to get the DA's Office to file murder charges?", Dousay responded, "That is something I couldn't answer", and agreed it was "way premature" to do so. (RR 7 – 133).

Carrizal met with Elizabeth Melgar on December 26th and told her he was not pointing his finger at Sandy. (RR 10 – 76). Yet, his supplement clearly reflected at approximately 2:00 a.m., December 24th--

> I (Carrizal) advised District Attorney Tammy Thomas of the facts behind the death of Jaime Melgar. ***She advised murder charges would not be accept.*** **(*sic*)** *Thomas advised that I update her on the status of the case as investigated and the conclusion of the evidence that was submitted for all DNA testing.*

(RR 10 – 77-80) (Emphasis added).

D. Sandy provides information and possible leads that detectives refuse to pursue; many of Sandy's statements are corroborated by undisputed facts

There were a number of leads never pursued and many statements Sandy made to detectives were corroborated by evidence in the case:

- Los Cucos restaurant receipt corroborated Sandy's statement that she and Jaime went there for dinner on December 22nd. (RR 4 – 146-147;

State's Exhibit 419, RR 10 – 81; State's Exhibit 673, 21:47:23). Detectives never bothered to interview the waiter or manager despite Dousay acknowledging the relevancy of talking to anyone who had contact with the suspect (and victim) to determine how they behaved. (RR 8 – 30);

- CVS receipt for Coke and Sprite corroborated Sandy's statement that they went to CVS after dinner for mixers and planned to go home and get into the tub. These items were observed next to the Jacuzzi. (RR 10 – 81, State's Exhibit 673, 21:50:24, State's Exhibit 298). CVS surveillance video corroborated Sandy's statement that she remained in the car and that Jaime entered the store at 9:33 p. m. (RR 8 – 20-25);
- Sandy said Jaime got a haircut at Nina's on December 22, 2012 yet no effort was made to confirm this or talk to his hairdresser. (RR 8 – 124);
- When asked what she and Jaime wore, she correctly described their clothing; when Dousay asked where she put her boots, Sandy replied, "I believe I left them in the bedroom, usually by the ***television***."(RR 8 – 104-105,RR 8 – 105; State's Exhibit 673, 21:53:46). Defense Exhibit 2219, a photograph of the master bedroom showed her boots next to the treadmill, the television antennae is visible ***but no television***. When Dousay was asked where the television went, he responded, "I can't answer that." (RR 8 – 106; State's Exhibit 262);
- Sandy told them that after getting out of the tub she went to her closet and put lavender panties on. (RR 8 – 129-130). Defense Exhibit 2264 depicted them on the floor with visible fecal matter;
- Sandy told them that Jaime got out of the Jacuzzi to check the dogs and wrapped a towel around himself. (RR 8 – 129). Tape lifts and pickings revealed the presence of animal hair, dirt and debris from Jaime's right hand, legs and feet. (RR 12 – 177-178). Defense Exhibit 2326 depicted a white towel on the closet floor near his feet. (RR 8 – 128-129). This was further corroborated by Jaime's underwear which can be seen near the Jacuzzi. (State's Exhibit 309);
- Sandy informed the detectives that she and Jaime owned rental property and had problems with a renter who needed evicting; Sandy told them

that contact information was on her computers (in police custody) but no follow up took place. (State's Exhibit 673, 22:39:33-22:40:04).

VII. Following a lengthy interrogation, Sandy is returned home

A. The Armstrongs arrive and find Sandy cold, shaking, in shock, and not very responsive

The Armstrongs were best friends with the Melgars for thirty years. (RR 12 – 126). When they learned about Jaime's murder, they tried to find Sandy. (RR 12 – 139-140, 240-241). When Sandy finally called, she sounded "horrible, very, very weak." (RR 12 – 241). When they arrived at the Melgar residence, Sandy was pale, cold and clutching her dog. (RR 12 – 143). Tammy held her–"she was so cold ... shaking." *Id*. Tom testified: "I don't know exactly what shock looks like, but to me, that's what it was–cold, scared, not real responsive." (RR 12 – 242). Tammy was scared because Sandy "was so blank and she had that look" like she had before having a seizure. (RR 12 – 144).

Tammy searched for Sandy's seizure medications. (RR 12 – 145). She found Sandy's purse "dumped" on the bed; there was Tegretol but no phenobarbital. (RR 12 – 146). (State's Exhibit 254, depicts the prescription bottle as Tammy testified.) Ultimately, she found 3 phenobarbital tablets and brought them to Sandy. *Id.* Tammy identified State's Exhibit 223, a photograph, depicting the treadmill and table in the corner of the master bedroom. (RR 12 – 146-147). Tammy had been in Sandy's

bedroom and bathroom before and testified that the "little TV" Sandy kept on that table was missing. (RR 12 – 147). She identified the homemade antenna that Jaime built. (RR 12 – 148). State's Exhibit 319 was identified as the chair that "normally sits inside [Sandy's] closet." *Id*. Sandy would sit there and dress in the closet. *Id.*[113]

B. The Armstrongs take Sandy to their home where Tammy feels a bump on Sandy's head

Sandy asked Tom to look for her wedding rings but he couldn't find them. (RR 12 – 150). Tom went to secure the house and gather her dogs. (RR 12 – 244). **He went to the interior garage door and noticed that the knob was loose; he could *not* lock the door to secure it.** (RR 12 – 244).

They drove to their home; Sandy was "stunned", very upset and distraught. (RR 12 – 148-149, 244-245). After Sandy bathed, Tammy offered to comb her hair. (RR 12 – 151). As she did, Sandy flinched; Tammy rubbed Sandy's head and found a knot on the right side. (RR 12 – 150-151). Tammy insisted Sandy see a doctor. (RR 12 – 152). *See* Defense Exhibit 40, medical records of Dr. Granda.

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[113]Elizabeth Melgar also confirmed this, explaining her mother had to sit to dress because of joint pain and stiffness from lupus; she had seen the chair in the closet when she was home visiting her parents in the October/November time frame. (RR 12 – 64).

C. Elizabeth Melgar arrives from Europe–her father has been brutally murdered and her mother has become the only suspect

Elizabeth was living in England when she heard of her father's death. (RR 12 – 52). The police told the family that Sandy was taken to a hospital so she called local hospitals long-distance trying to find her. (RR 12 – 52). (Later, when Elizabeth met with the detectives, Dousay claimed that a doctor checked out Sandy at the scene but that was another lie.) (RR 10 – 74). She arrived in Houston on December 25, 2012 and immediately went to her mother; she described Sandy as devastated, broken, sobbing, traumatized, depressed, a "shell of a person." (RR 12 – 53, 56). She noticed bruising to Sandy's right eye and arms. (RR 12 – 54-55; Defense Exhibit 30). She felt the lump on Sandy's head and knew it was painful because her mother winced. (RR 12 – 54-55).[114]

D. Dr. Granda examines Sandy and confirms the presence of a superficial hematoma on the right side of her head

After the holidays, on December 27, 2012, Sandy was examined by Dr. Enrique Granda. (RR 12 – 55). Rocio Reib, a friend of the Melgars, was present. (RR

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[114]The prosecutor asked Elizabeth: "Do you know why it is that she told the people that arrived on the scene first why she didn't have a bump on her head?" (RR 12 – 98). Defense counsel objected to her misstating the evidence. *Id.* She did not tell the first responders that she didn't have a bump on her head. The prosecutor then asked:"[w]ould (it) surprise you to learn that she only told the EMT she had a headache?" (RR 12 – 99). Again, this misstated the record. Sandy told EMS Roberts several times she had a headache *and her head hurt* . (RR 6 – 33, 45, 50, 62).

12 – 7-8). Rocio first saw Sandy on December 26th. (RR 12 – 7). Sandy was sobbing and was devastated. *Id*. Rocio noticed a bruise on Sandy's right eye and felt the bump on her head; it seemed very tender. *Id*. Dr. Granda's examination revealed the presence of a hematoma on the right side of the head, bruises on her arms and right eye, and the mottled fingernails. (Defense Exhibit 40).

VIII. Non-investigation conducted by Carrizal and Dousay

A. Houston–We have a problem

Carrizal left the HCSO in October 2013 and was hired as an investigator by the Harris County District Attorney's Office; however, in January of 2014, he was allowed to resign *in lieu of being terminated* after backdating a search warrant return and lying about it. (CR – 321, 346)(RR 10 – 158-159). Incredibly, once rehired by the HCSO, he lied about being the subject of any disciplinary investigation, and then lied again during an investigation into the application process. (RR CR – 220).

Allegations of "untruthfulness" were sustained by the Administrative Disciplinary Committee of the Sheriff's Department and the Internal Affairs Division stated that Carrizal had "withheld, falsified, or misrepresented information that was requested in his polygraph questionnaire and during his application process." (CR – 197, 221). Ultimately, Sheriff Garcia terminated Carrizal finding that his conduct "demonstrates a gross lack of judgment, professionalism and integrity." (CR – 253,

322). Findings of "untruthfulness", knowingly or willingly providing "false information in records", and "dishonesty" were made. (CR – 323-324). Thereafter, the HCSO Civil Service Commission upheld the sheriff's decision. (CR – 257).

Called by the defense, Britni Cooper, a Chief Felony prosecutor, testified Carrizal was "**untruthful**" and that **he wasn't thorough in a prior murder case where he conducted "a sloppy police investigation**." (RR 11 – 12). (Emphasis added). Julian Ramirez, a former assistant district attorney for 27 years, who left as the Chief of the Civil Rights Division, testified that he had worked on cases with Carrizal and also that he investigated a matter involving him. (RR 11 – 75). He opined that Carrizal "***is not truthful***." (RR 11 – 75). (Emphasis added).

B. Despite statements made to Sandy that he would doggedly investigate the case, Dousay is totally disengaged, indifferent and does very little meaningful work

Despite Dousay's proclamation that they would "leave no rock unturned" the record establishes that he was literally unengaged in this "investigation." Dousay made the scene on December 23rd and interrogated Sandy into the early morning hours of December 24th. On December 26th, he interviewed Elizabeth and Odile Robertson, drove to CVS and Los Cucos and returned to the Melgar residence. On December 28th, he spoke to a neighbor and checked for video footage. (RR 8 – 37-

42). He and Carrizal went to Chad Sullivan's[115] house, knocked on the door on two occasions that day, left their business card, and never bothered to interview him thereafter. (RR 10 – 101-103). **After December 28, 2012, Dousay did nothing substantive on the case.** That was it for Dousay's "investigation."

C. Detectives meet with Elizabeth Melgar but give her the run-a-round and "blow her off" despite the fact that she provides them additional information in support of her mother's innocence which is never followed up on

On December 26, 2012, Carrizal and Dousay interviewed Sandy's daughter, Elizabeth. (RR 9 – 10, 34).[116] She was anxious to learn about any leads. (RR 12 – 56). The detectives, however, were not forthcoming and were dismissive. (RR 12 – 62). She answered their questions and attempted to educate them about her mother's extensive health problems[117] including lupus[118], hip replacements, seizure disorder,

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[115]Sullivan was seen at the crime scene acting "strange"; the detectives went to his residence only because their superior ordered them to do so. *See discussion*, *infra.*

[116]This occurred at the Armstrong's residence. The detectives never bothered to speak with them. (RR 12 – 153-154, 245).

[117]Elizabeth was unable to remember the names of her mother's doctors. (RR 12 – 57-58). The detectives, however, were not truly interested, never following up. *Id*.

[118]Sandy often slept in late because of exhaustion. *Id*. She also had rheumatoid arthritis, a painful, and debilitating disease which made her hands stiff, affected her ability to hold things and made getting dressed more difficult. (RR 12 – 46). Sandy used a cane. *Id*.

and short term memory loss. [119] [120] (RR 12 – 39-41, 57-58). The detectives asked if it was possible for her mother's memory to return, and if it did, they wanted to be informed so they could follow up–which was a total canard. (RR 12 – 57-58, RR 8 – 35).

They told Elizabeth they were trying to get as much information as possible, were not "pointing their fingers at anybody", were considering the possibility that suspects entered the house and murdered her father, and were "looking at every angle." (RR 8 – 17-18). Those statements are belied by the record and Dousay admitted as much when he acknowledged, "we're not pointing fingers at anybody" was "possibly" a lie given Carrizal's attempt to have murder charges accepted against Sandy at 2:10 am on December 24th, even ***prior*** to completion of any forensic investigation at the scene. (RR 8 – 17-18).

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[119]Elizabeth witnessed one of her mother's seizures where Sandy fell and hit her head. (RR 12 – 43). After a seizure, Sandy had little memory of what happened, she would frequently sleep for extended periods. *Id.* An aura would sometimes occur prior to the seizure which caused her mother not to think clearly so Sandy would not drive much. (RR 12 – 44). Sandy would not go to her doctor but would take her medications and lie down. *Id.*

[120]Carrizal acknowledged that Elizabeth told them Sandy had seizures but he didn't document this in his offense report. (RR 10 – 65-66). Carrizal had no recollection that Elizabeth said Sandy also had short term memory loss and retrograde amnesia. (RR 10 – 66). It was established that was, in fact, discussed. (RR 10 – 72).

They suggested that Jaime had a girlfriend whose husband came into the house, knocked her mother in the head, threw her into the closet and then killed her father. (RR 12 – 59).[121] Elizabeth said that didn't make sense because her parents "were very happy together." *Id.*

They asked her to go to her parents' residence (she had not been there since her arrival) and note anything missing, ostensibly to follow up. (RR 8 – 34). Elizabeth had already spoken to the Armstrongs and to family members who had found Sandy; who thought a television was missing because it was not in her parents' bedroom. *Id.* She also provided them *specific* information about prescription pain medication she thought might be missing such as phenobarbital and hydrocodone. (RR 12 – 61)

Later that day, on December 26th, Elizabeth and her husband, Anthony, went to her parents' house; the Infiniti had been moved from the garage. (RR 12 – 63). She noticed cords dangling from the TV in the living room, and saw that an Xbox was missing. (RR 12 – 64). *See* Defense Exhibit 2109. The small TV in her parent's bedroom was gone. (RR 12 – 64-65). In the middle of the garage, close to the garage door, Elizabeth noticed her old backpack, near where the Infiniti had been parked; it

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[121]Interestingly, at least this part of the detectives' theory–that someone had come into the house and knocked Sandy in the head rendering her unconscious *before* Jaime was murdered–was entertained by the detectives in their conversations with Elizabeth but not in the interrogation of her mother, or for the remainder of the investigation, despite evidence supporting it.

had been kept in the guest bedroom. (RR 12 – 67).[122] She saw the corner of the Xbox in the backpack. *Id.* She "figured that whoever had been in the home had forgotten, or just left it." (RR 12 – 67-68).

Elizabeth contacted the detectives to inform them of her findings. (RR 12 – 67-68).[123] When they arrived, she executed a consent to search, pointed out the backpack, and directed them to the interior garage door doorknob, which "would just spin" and did not appear to work. (RR 12 – 65-66). Defense Exhibit 2069 depicted how the interior garage door appeared on December 26, 2012. The detectives blew her off and said it "was probably already [like] that."[124] (RR 12 – 66). (**If it was already like that, this means the door was *not* locked on the evening of December 22, 2012. And yet, despite clear evidence to the contrary, Dousay was adamant when he interviewed Marissa Melgar at the scene that the interior door "was not unlocked.**") (RR 7 – 122). Increasingly, Elizabeth felt like they were not taking her seriously. (RR 12 – 66-67).

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[122]She identified Defense Exhibit 31 as accurately depicting where she found the backpack. (RR 12 – 69-70). She saw empty tool boxes and suspected, but was not certain, anything had been taken. (RR 12 – 93-94).

[123]Elizabeth later reported that her white Xbox was also missing. (RR 12 – 70-71).

[124]This was consistent with Sandy's statement that she did not think the door locked.

Dousay requested a CSU to get the backpack and process the scene. (RR 8 – 38-39). Elizabeth identified State's[125] Exhibits 32-37, photographs of items taken from the backpack and later processed,[126] which included her parents Xbox, "Kinect" device, Lost Planet and Gears of War games and two controllers. (RR 12 – 71-74). Defense Exhibit 2165 depicted Elizabeth's open bedside table drawer where she kept her games, including Defense Exhibit 34, Gears of War game, and Defense Exhibit 35, Lost Planet game. (RR 12 – 74-75). The Xbox controller was kept "[n]ext to the TV by the Xbox, that cubby hole area in the living room where Elizabeth saw wires dangling from the wall." (RR 12 – 64, 75). Defense Exhibit 2109.

She identified her jewelry box in Defense Exhibit 2167; the pearls Carpenter was questioned about were indeed *costume* jewelry. (RR 12 – 73). *Id*. Jewelry found in the backpack was identified as Sandy's. (RR 12 – 77-80; State's Exhibits 656, 657, 659-661, 663, 664, and 666). Sandy kept jewelry in jewelry boxes in her closet, master bathroom, the dresser drawer in the master bedroom, and in the safe. (RR 12 – 79-80). Elizabeth noticed in January of 2013 what appeared to be a bloody thumb print on the safe handle and photographed it; this was provided to Carrizal. (RR 12

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[125]These exhibits in fact are *Defense* exhibits. Defense Exhibits 32-37 correspond with the witness' testimony and State Exhibits 32-37 are photographs of the Melgar residence.

[126]*See* testimony of Matt Quartaro, *infra.*

– 86). Later Carrizal told her the safe had been processed which, of course, was not true. (RR 12 – 86).

Elizabeth spoke to Carrizal throughout his investigation "because she was trying to provide anything she possibly could" including the fact that Sandy's Hydrocodone was missing. (RR 10 – 87, 224-225). On January 8, 2013, Elizabeth provided a list of missing items: jewelry, two watches–Tourneau and Rolex replica, television, medications, computers and guitar. (RR 10 – 106, 107-108; Defense Exhibit 8; RR 12 – 117). She requested "contact" information from Sandy's phone so she could provide her mother's doctor's information. (RR 10 – 109-110).[127] In Elizabeth's email–Defense Exhibit 8–she told Carrizal that her cousin left him messages about a suspicious car at the Melgar residence but never received a response. (RR 10 – 110). Carrizal did not "recall" this. *Id.*

Carrizal acknowledged receiving information from an attorney for Sandy, Nick Oweyssi, who provided names of possible suspects, John Malbro and Jared David Cox. (RR 10 – 112). Carrizal had to be prodded by a prosecutor to interview the men and even then, that occurred ***18 months*** after this information was provided; it was unclear, however, that he even contacted the right people. (RR 10 – 115-118). In

[127]The detectives never followed up on any of this.

addition, on January 29, 2013, Mr. Oweyssi notified Carrizal that bits of Sandy's memory returned. (RR 10 – 113). Sandy recalled being tied up and described seeing a young Hispanic female, in her early to mid twenties, looking at the person tying her up; the Hispanic female had short hair pulled back and was wearing a red blouse with a black winter scarf around her neck. (RR 10 – 113-114).

D. Law enforcement refuses to follow leads

1. The stranger at the scene–Chad Ryan Sullivan

Channel 13 news personnel advised law enforcement while at the scene that a male named Chad Ryan Sullivan was "acting strange."[128] Carrizal could not have cared less and made no effort to identify and interview the Channel 13 personnel who thought it was significant– despite Carrizal acknowledging that was information he would want to look into. (RR 10 – 91-92, 99). Carrizal verified Sullivan had a criminal history but did not recall what it was. (RR 10 – 92-93). [129]

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[128]Scott Lacy, a Melgar neighbor, was called by the defense; he knew of Sullivan, who had "a bit of history with the law", from the neighborhood. (RR 10 – 233-235). He identified him from a booking photo. (Defense Exhibit 11; RR 10 – 235). Although Lacy did not characterize Sullivan as acting strangely, he noted that Sullivan parked his car a good ways from the crime scene and "very calmly walked down there." (RR 10 – 234). He did, however, stay at the crime scene "quite a long time....most of the evening, if not until late into the night."(RR 10 – 235).

[129]Defense counsel presented Carrizal with Sullivan's local criminal history; he acknowledged that Sullivan had engaged in assaultive behavior but was unaware that Sullivan was arrested carrying a knife and had bonded out of jail *just two days* before Jaime's murder. (RR 10 – 99).

He conceded Sullivan was a thief based on the Leads Online Database which chronicles pawnshop transactions. (RR 10 – 95). Sullivan frequented a pawnshop shortly after the murder and visited numerous other pawnshops in the two years following the murder that was documented in 31 pages of pawnshop entries presented to Carrizal by defense counsel. (RR 10 – 95-96, 98). Carrizal was unaware of this information. (RR 9-98). Carrizal didn't "recall" that Sullivan lived only a two to three minute walk – just one block away–from the Melgar's. (RR 10 – 101). On December 28th, 2012, he and Dousay knocked on Sullivan's door on two occasions and left a business card; that was the last "effort" made to interview him and, needless to say, Sullivan never called. (RR 10 – 103-104). Obviously, considering him a potential suspect was never meant to be. When asked on cross-examination, Dousay didn't even know who Sullivan was. (RR 8 – 132).

2. Previous thieves and drug users at the Melgar home

When asked if their house had ever been burglarized, Sandy responded, "Not this house... we had some kids take some stuff, friends of my daughter, drug addicts, took some stuff." (RR 8 – 122-123). Dousay admitted never following up. (RR 8 – 123). Sandy also said her daughter married "some loser who was a stalker." (RR 8 – 125-126). Dousay never bothered to ask his name or find out if this might be relevant. (RR 8 – 126).

IX. Blood spatter and fingerprint analysis

A. Blood spatter testimony from the State's witness fails to advance the prosecutor's theory

Celestina Rossi, a crime scene investigator with the Montgomery County Sheriffs Department, was called as a witness for the prosecution. (RR 9 – 6). The prosecutor contacted her literally a month before trial in a case pending over 3 and a half years; Rossi didn't speak to any officers involved, nor visit the crime scene. (RR 9 – 77). This was Rossi's 25th occasion testifying as an expert witness and on *every* occasion (save one)[130] she testified for the prosecution. (RR 9 – 75-76). Clearly, she was an unabashed professional, partisan witness for the prosecution.

She was asked about blood spatter. State's Exhibit 709 depicted a deep slash between Jaime's right thumb and index finger and Rossi opined there would be "arterial projection" and pointed to a projected blood pattern on a bed sheet and the back of the chair between the bed and closet where Jaime's body was found. (RR 9 – 30, 40; State's Exhibit 725–Rossi's report).

She opined this projection originated from the closet because dripped blood was found on the carpet *at the threshold of the closet*–the only place where these

[130]She was called as a prosecution witness but ended up as a defense witness when the habeas case collapsed. *Id.*

stains were observed–and Jaime's hand could not have been beyond these stains when the arterial projection of blood occurred. (RR 9 – 41). His right hand (and veins and vessels) had to have been facing toward the chair at the moment of the arterial projection of the blood. (RR 9 – 42). As she testified, "your confines of where you can be is limited based upon this 2–foot opening between the (closet) door and the dripping at the threshold." *Id*.[131] She confirmed that the stabbing of Jaime would have taken place toward the back of the closet because of the absence of blood anywhere else in the house (except at the closet threshold.) (RR 9 – 42). The only blood spatter she saw was in the closet, on the chair and bed sheet. (RR 9 – 45-46, 117, 120-121).

But Rossi couldn't help herself and added, "there was detection of blood in the master bathroom." (RR 9 – 87). But as her testimony on cross-examination irrefutably

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[131]The record is not clear based on the prosecutor's direct examination where the intruder stood while inflicting the injury to Jaime's right hand; but it is clear that the intruder would have had to be close enough to inflict the injury and not block the arterially projected blood which hit the back of the chair and the bed sheet; and Jaime's hand could not have been beyond the threshold of the closet with the hand pointing toward the chair at the time he was cut. (RR 9 – 42-44).

The prosecutor posed a hypothetical: if Jaime was starting to get stabbed, would it be reasonable to think that he would turn around to go to the back of the closet to get the gun? Rossi stated, "Sure". (RR 9 – 44). And, if he turned around to get the gun, he would be exposing his back; yet there were no stab wounds to Jaime's back. *Id.*

This hypothetical is problematic and assumes too much. It is just as plausible that Jaime rushed into his closet to get the gun but the attacker was on his heels so Jaime turned around to ward him off and tried to get out of the closet as he was being cut. He could have been cut on the right hand when his hand was at the threshold of the door. After all, Rossi confirmed that she could *not determine the order in which the wounds were inflicted*. (RR 9 – 100).

confirmed, that contention was actually belied by the scientific testing results. She was merely referring to the chemical luminescence on the sink and tub. (RR 9 – 87-88). She conceded any positive reaction to the application of "lumenal" or "bluestar" could be attributable to many things and not necessarily blood–a "false positive"–and a reaction that presumptively *may* be blood, in fact, might not be. (RR 9 – 89-90). [132]

Rossi agreed if the bathroom was truly associated with the crime scene, she would expect to find the victim's blood or somebody's blood there. (RR 9 – 93). Further, based on this savage stabbing, the killer "no doubt" would have gotten Jaime's blood on himself; and, if the killer cut himself, he would possibly have bled on himself as well. (RR 9 – 93-94). She also agreed that if the killer had washed himself off in the bathroom, one would expect to find the victim's blood there. (RR 9 – 94). *Rossi confirmed the DNA testing established there was no evidence of the presence of Jaime's blood in the bathroom sinks and tub.* (9 – 94). She also acknowledged that the presence of DNA does not establish the presence of blood because the DNA could be from saliva, semen, or other bodily fluids. (RR 9 – 94-95).

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[132]Rossi would not acknowledge that human *and* animal urine can cause "false positives" in fluorescein testing. (RR 9 – 9-90). However, when shown a scientific journal establishing that very fact, she conceded it was true. (RR 9 – 111). *See* Ricardo Tomboc, C.L.P.E., "The Fluorescein Method of Blood Detection."

In any event, whatever "lit up" the sinks, Rossi confirmed, based on the results of the DNA testing, **it was not Jaime's blood.** (RR 9 – 95, 113).

Rossi observed blood patterns on State's Exhibit 272–the bench located directly behind the chair, suggesting that something bloody had been on the seat and was no longer there and *was never located*. (RR 9 – 66). (RR 9 – 67). ***Significantly, the prosecutor never asked Rossi if she had an opinion whether any specific item could have caused that blood pattern on the bench;***[133] ***nor was she asked if the prosecutor's theory espoused in final argument, as to how Jaime supposedly got cut on the throat and on his right hand between his thumb and index finger was likely, plausible, or even possible***.[134]

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[133]Rossi was asked if any material found at the scene had blood on it; she responded that a white blouse found in the Jacuzzi reacted to fluorescein "which is a *blood stain enhancement chemical*." (RR 9 – 68) (Emphasis added). (**The white blouse, however, was *not* shown to have blood on it.)** (RR 12 – 200; Defense Exhibit 23 at 8). She was not aware of anything *recovered from the house* that could have been on the stool with blood on it to cause that blood pattern. (RR 9 – 68).

[134]As will be seen, *infra,* in final argument, the prosecutor promoted a number of unsupported theories, both as to *how* the murder purportedly was committed, and *why* Sandy had to be the killer. One would fairly assume, if there was, in fact, any validity to these theories that they would have been readily supported by the testimony of prosecution experts. And yet, a strange and telling pattern emerged: there is an *absence* of evidence or testimony that supports the prosecutor's theory because scenarios conjured up by her were never "vetted" or even broached on direct examination and obviously not subjected to cross-examination.

Based on blood stains on his body, Rossi believed there was a "secondary event" where either Jaime's hands touched his body "or someone that is bloody is touching him, transferring that blood onto areas that are unstained." (RR 9 – 47). Rossi testified she "[a]bsolutely" would expect to find blood elsewhere in the house if that person has blood on him.[135](RR 9 – 47-48).

Without question, the assailant had blood on him based on Jaime's injuries; Rossi would expect blood on the assailant's hands, possibly arms, and "on the front of them." (RR 9 – 58, 101). Because of the absence of transfer blood stains, no footwear leaving the premises and no transfer stains on the back of the door, Rossi opined, "everything stayed right there in the bedroom." (RR 9 – 58). Expecting the attacker had blood on himself and if he had contact with Sandy he would have transferred it to her, and "possibly" to her bindings, to the closet door, or chair, Rossi testified, "[*T]hat is all assuming that the person that killed Jaime Melgar is the same person that was dealing with Sandra Melgar.*" (RR 9 – 71) (Emphasis added).

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[135]It was clarified on cross-examination that she had no opinion whether the killer was wearing gloves although home invaders commonly do. (RR 9 – 100, 113-114). She admitted, however, that taking off bloody gloves creates a "cast-off" pattern and she saw no evidence of blood (RR 9 – 113, 115-117, 121). It is possible to take gloves off and "turn them into each other" but she conceded that might take some level of sophistication or experience taking bloody gloves off. (RR 9 – 115). When asked what would the killer do with a bloody glove that he took off, she replied,"You can put it in your pocket" (and take it from the crime scene). (RR 9 – 121).

She claimed she was unaware of indicators of the presence of more than one person." *Id.*[136] Yet, on cross-examination, she admitted that she was *not* saying there was only one intruder; in fact, when asked if there could have been more than one, she replied, "**Sure**." (RR 9 – 86). When asked, "We can't exclude that, can we?" she responded, "**No, sir**." (RR 9 – 110). Rossi admitted that the theory that the killer had to transfer blood on Sandy's bindings "goes down the drain" if there was another home invader present, or if Sandy was knocked unconscious prior to Jaime's murder. (RR 9 – 125-126).

The intruder could have *possibly* stepped on blood and left a shoe or foot print assuming "*they were in the closet on top of that blood*...." (RR 9 – 58-59). (Emphasis added). But Rossi confirmed there was no blood pooling in the closet and most of the blood was found underneath Jaime. (RR 9 – 101-102). Although she saw spatter stains, she did not see large volumes of pooled or saturation stains on the carpet. (RR 9 – 101-102).

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[136]Contrast this with Dr. Pinneri's testimony, *infra,* who could not rule out the presence of more than one person, nor could she rule out the possible use of *two* weapons which caused the sharp force injuries. (RR 8 – 204-205). The DNA analysis, *infra,* indicated the presence of foreign, third party DNA, male and female, including unknown female no. 1, on many items consistent with a home invasion. Apparently, Rossi wasn't shown the DNA results.

On cross-examination, Rossi was shown Defense Exhibit 2292–depicting the carpet directly outside the closet; she agreed it was possibly a shoe impression without blood. (RR 9 – 103-104).[137] Shown photographs depicting the master bedroom carpet where a person would have had to walk on in order to leave the room or enter the master bathroom, Rossi agreed there was no blood leading away from the closet to the door ***nor any blood on the bedroom carpet heading toward the master bathroom***. (Defense Exhibits 2221, 2230, 2291, 2226 and 2294 (RR 9 – 106-108)).[138] Despite proclaiming, "everything stayed right there in the bedroom" she conceded that she was ***not*** saying the killer(s) could not have left without leaving blood traces behind. (RR 9 – 108-109). She readily agreed the killer(s) could have murdered Jaime without getting blood on their feet and then fled the premises. (RR 9 – 109-110).

B. Opinions regarding possible "staging" and knot tying are based on erroneous assumptions and/or inadequate and incomplete information.

Rossi had an opinion about "staging the scene" which was curious in light of her contention that the prosecutor didn't ask her to "assess the crime scene." (RR 9

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[137]The shoe impression appears to be consistent with a person walking *away* from the closet.

[138]Rossi agreed that the *only* carpeting was in the master bedroom, master bedroom closet and master bathroom closet. (RR – 109).

– 127-128). On cross-examination, she was asked whether there were any peer-reviewed studies validating opinion testimony about the "staging" of a crime scene. (RR 9 – 79-80). She acknowledged that it is an aspect of scene investigation, but could not provide any peer–reviewed studies or validations and conceded that investigators might come to different conclusions about whether a scene was "staged." (RR 9 – 80-81). She admitted that every home invasion was different. *Id.* She claimed "this is not what we *typically* see." (RR 9 – 56) (Emphasis added).

It became readily apparent that Rossi's opinion about possible "staging" of the crime scene was based, at least in part, on erroneous assumptions and/or insufficient information. As stated previously, she was not at the crime scene during the investigation and had never spoken to any of the investigators. She relied on offense reports and looked at the scene photographs. (RR 9 – 77). She observed that no glass had been broken and no doors had been "kicked" open. (RR 9 – 56-57). However, Carpenter, by his own admission, took no photographs of the locking mechanism of the *interior* door of the garage and never attempted to lock the door or determine if the lock was even operable (which it wasn't). (RR 5 – 43-44). He was unaware that the interior door didn't lock, therefore, would not have mentioned anything about that in his offense report. And yet, Rossi relied on the "absence of forced entry" and

supposed "lack of signs of disturbance" as important factors in opining that the crime scene had possibly been staged. (RR 9 – 56-57, 81-82).

She pointed to the chair and stool beside the bed which had not been turned over and items on the nightstand that hadn't been bumped. (RR 9 – 56-57). And yet, there is nothing about that which is inconsistent with Jaime being stabbed to death and an ensuing struggle occurring between him and his killer *inside the closet,* as Rossi confirmed. At one point Jaime's right hand was at the threshold of the closet when it was cut based on the arterial spray and the dripped blood at the threshold of the closet, but that is as far out of the closet that his body ever got as he was being stabbed. There was no blood or blood spatter found anywhere else except on the chair, the bed sheet, and on the carpet directly under the chair as blood dripped from it. A close examination of photographs show that the chair and bench are positioned very close to the bed and had no place to go if jostled. (State's Exhibits 275, 279). Moreover, the closet door didn't open parallel to the nightstand. (State's Exhibit 271). Even if pushed open, the door was not likely to "knock" anything over on the nightstand because a large pillow buffered the space between the *open* nightstand drawer and door. (State's Exhibit 270).

Rossi proclaimed on direct examination that the "whole point of a home invasion is to have some kind of benefit." However, on cross-examination, she was

confronted with the reports of missing items stolen from the house–a fact conveniently glossed over by the prosecutor–and acknowledged that prescription drugs, jewelry and a television were missing. (RR 9 – 82-84). When asked if reporting items of stolen property was consistent with somebody stealing from the house, she admitted, "***I'm not refuting that***." (RR 9 – 83) (Emphasis added). She also conceded that she had never been in the Melgar home, didn't know how they kept their bedroom and drawers, and would not know if anything had been disturbed or stolen. (RR 9 – 71-72).

She opined that Jaime's position on a dry cleaning bag, tied up with telephone cord around his ankles, fit into a "staging idea". (RR 9 – 60-61). The cord found wrapped around Jaime wasn't tied in the back and the bloody finger impressions she believed she saw on several areas made her think that someone grabbed him. *Id*. She thought this *might* be "staging." (RR 9 – 62). (Whoever wrapped the cord around Jaime, based on Rossi's testimony, would have touched him, increasing the chance that blood was transferred onto the killer(s)). (RR 9 – 58, 70-71).

Finally, Rossi was shown some of the bindings that were cut off of Sandy and was asked if someone had their wrists wrapped "in these two pieces of cloth–with circles on each side. . . . do you have an opinion as to whether or not you would be able to get out of this?" (RR 9 – 74). She dutifully responded, "[t]hey would just fall

off," "[b]ecause the holes are so large and this knot isn't even tied tightly, where just by pulling on it a little bit, it already pulled to where it almost seems like I could wear it as a belt."[139] *Id*.

But she readily conceded on cross-examination, that how the pieces were affixed to the board did not necessarily depict how Sandy was tied up. (RR 9 – 127). She read witness statements stating Sandy was tied behind her back, *both her arms* and her legs, and admitted that the best person to ask about how tightly Sandy was tied up were the witnesses who untied her. (RR 9 – 132, 135). She was not saying that Sandy had her hands in two big loops; in fact, she had no personal knowledge and was only asked to review blood spatter. (RR 9 – 127-128).

C. Law enforcement completely fail to examine for possible fingerprints at the likeliest point of entry into the house, namely the interior garage door leading into the house

Although latent prints taken from various areas of the house were of insufficient quality to make comparisons, there was no evidence that any effort was made to examine or lift latent prints from the *exterior* side of the interior garage door or from its door knob. (RR 9 – 151-152).

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[139]The prosecutor took the pieces of material found at the scene and staged them in a large figure eight on a poster board. (RR 9 – 126). The manner that the bindings were displayed to the witness (and to the jury) was not, ***in any way, similar*** to the manner in which the bindings were found tied on Sandy before being cut off.

X. Autopsy of Jaime Melgar discloses a violent and brutal attack inconsistent with Sandy's injuries and medical condition

Dr. Kathryn Pinneri, an Assistant Chief Deputy Medical Examiner for Harris County, described the autopsy as a "very complicated case" because of the large number of injuries. (RR 8 – 158). A total of thirty-one (31) *sharp force* injuries were documented: "Torso -7 stab wounds, 6 incised wound clusters; Head - 9 incised wounds, some with blunt characteristics; Extremities - 9 incised wounds, consistent with defensive type injuries." (State's Exhibit 677 at 15). A significant number of *blunt force* injuries were not numbered; on cross-examination she testified, "there were a lot, probably more than 20" blunt force injuries. (RR 8 – 164, 203). Jaime was struck, cut or stabbed "over 50 times." (RR 8 – 214).

Dr. Pinerri testified that State's Exhibit 569–the knife retrieved from the Jacuzzi–could have caused and was consistent with *some* of the wounds but she could not rule out the use of *more than one weapon* because "the wounds of the head have a different appearance than the wounds on the torso." (RR 8 – 180-186,195). She was asked about the possible use of a serrated edge weapon; clearly, State's Exhibit 569 does *not* have a serrated edge. (RR 8 – 196). The Anthropology Consultation Report reflects:

> [t]he cut marks are consistent with a bevel-edged tool. The majority of the cut surfaces are smooth indicating a portion of the tool is non-

> serrated. The cut surfaces with irregular striations suggest the beveled edge of the tool is marked with use defects. *However, a tool with primary and secondary striation pattern cannot be excluded as a possible weapon based on the analysis.* [140]

(State's Exhibit 677, at 2.) (Emphasis added). She testified that a used kitchen knife could make it appear that it's possibly serrated; however, it is equally clear that *no forensic examination of State's Exhibit 569 was shown to have been conducted.* A visual examination of the blade shows a smooth edge with no striations. (State's Exhibit 139).

On Jaime's hands, there were a number of injuries. On the back of his right hand was a blunt injury and also a sharp force or incised wound on the pinky side of his hand. (RR 8 – 173; State's Exhibit 677 at page 10, Incised wound No. 26). Dr. Pinerri characterized this wound (and others) as defensive in nature. (RR 8 – 173). There was an abrasion or blunt injury to the back of the right wrist. (RR 8 – 177) . State's Exhibit 703 depicted an incised wound on the right index finger which was consistent with a defensive wound. (RR 8 – 174). On the palm of the right hand there were two incised wounds by the thumb which "goes in pretty deep" and exposed the tendons. (RR 8 – 175-177; State's Exhibit 706-710). It appeared to her that a blood

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[140]The prosecutor discussed this identical passage with Dr. Pinneri and quoted it directly; however she conveniently *omitted* reference to the italicized last sentence. (RR 8 – 218-219).

vessel had been cut across although she could not discern if it was an artery or a vein; such an injury would have caused a lot of bleeding. (RR 8 – 177).

Dr. Pinneri identified State's Exhibit 723–a photograph depicting Jaime's chest, neck and head–and was asked by the prosecutor, "does it look like these wounds are the same line?" (RR 8 – 193-194). Dr. Pinerri replied, "[t]here [sic] are in the same plane. Particularly this one right here (indicating) would be in the same linear plane as the other with a gap in between them." *Id.* (The record does not reflect to which wounds she was referring.) The prosecutor intentionally did *not* ask Dr. Pinerri whether those wounds could have been caused by Jaime's assailant standing behind him as he sat in the chair and drawing the knife across his chest and neck as she demonstrated to the jury in final argument. Irrefutably, there is no testimony from Dr. Pinerri, or from any witness that the neck injury occurred as the prosecutor suggested in final argument. *See discussion infra*.

On cross-examination, Dr. Pinerri conceded that the rod and metal bracket in the closet might have caused the blunt force injuries to Jaime's skull but "I'm not saying definitely. I'm saying that's a possibility." (RR 8 – 197). She agreed that it was also possible that Jaime was hit over the head with another object "with a sharp and blunt edge...." *Id.* She believed it was unlikely that they were caused by the knife. (State's Exhibit 569; RR 8 – 197-198). The autopsy findings confirmed Jaime had a

skull *fracture–a break in the skull*–which she characterized as a significant injury. (RR 8 – 198-199). Jaime had "a large area hemorrhage or contusion on the right side of the back of the head by the ear. Underneath that was some hemorrhage as well as a linear fracture through the occipital bone. . ." *Id.*

Dr. Pinerri also found orbital plate fractures to the bones over both eyes and a cut mark on the bone above the left eye." *Id.* Jaime's skull was fractured and he had blunt force trauma injuries to the top of his head; these were ***different*** injuries. *Id*. Dr. Pinneri testified, "[t]he injuries looked different . . . probably a different mechanism of injury. *Id*. Each respective injury was caused by different use of a weapon, thrust, or blow. *Id*. When asked whether Jaime could have been hit on the head and then later stabbed to death, she testified the injuries could have spanned an hour because the head injuries "were a bit more dried." (RR 8 – 216-17). She could not exclude the possibility that Jaime was hit on the head and then stabbed eight to ten minutes later. *Id.* (RR 8 – 214-215).

She testified it's difficult to determine when there are skull fractures and injuries to the head if the injuries were caused by a fall or by being hit with an object. (RR 8 – 199). She explained the phenomena of a "coup contrecroup"[141] which results

[141]See discussion of this concept by Dr. Leonard Hershkowitz, *supra*.

in an injury occurring on one side of the head with the brain moving forward "and impacts in the exact opposite area." (RR 8 – 200). *Id.* She thought he suffered more of a fall pattern, "*but he also has trauma to the front part of the head. So I don't want to overstep my bounds and say definitely because he does have the trauma to the front part of the face as well.*" *Id.* (Emphasis added.)

She confirmed Jaime sustained "a lot of injuries, blunt injuries that I see in people that are assaulted or beaten." (RR 8 – 201). This was "particularly violent." (RR 8 – 203-204). There were bruises on his back, hands, knees, and hips; some injuries were consistent with being hit with a fist. *Id.* He had blunt force trauma over the bridge of the nose inconsistent with the use of the knife. (RR 8 – 202-203). He had subcutaneous hemorrhages on the back of his right ankle consistent with being kicked. (RR 8 – 215-216).

She agreed "i[t]'s going to take some time" to cause Jaime's injuries because they were not "immediately incapacitating." (RR 8 – 204). Moreover, the defensive wounds on his hands were consistent with a struggle and fighting back. *Id.* ***Dr. Pinneri could not rule out that there was more than one murderer or determine how many people were involved***. (RR 8 – 204-205). Because of the sharp force injuries to the front of his body and his hands, Jaime's hands were "up against the weapon." *Id.* And, due to the various pathways of the sharp force injuries, she

stated,"[y]ou tend to see that more in situations where there is a struggle going on between the assailant and the victim." (RR 8 – 205-206).

She believed that there was no question Jaime and his assailant(s) were in close contact and Jaime was "very bloody." (RR 8 – 206). Based upon the type of struggle,... number of injuries, the closeness of the encounter,...", Dr. Pinneri agreed: "***I would expect that the person (assailant(s)) would have blood on them***." *Id.*(Emphasis added.) She believed Jaime was likely killed in the closet due to the amount of blood in the closet and the lack of it elsewhere. (RR 8 – 209).

Jaime's toxicological results showed .06 grams per deciliter, consistent with Sandy's statement that he had two or three cocktails. (RR 8 – 210-211). His hands were bagged before his body was brought to the morgue to preserve any evidence.(RR 8 – 211). Standard protocol is to collect fingernail clippings and scrapings. (RR 8 – 212).

XI. DNA findings–the State refuses to call a DNA expert and defend forensic findings which establish the presence of third- party DNA and fail to establish Sandy's DNA mixed in Jaime's blood

DNA testimony took a strange turn in this trial. The *defense* offered the reports from HCIFS and DPS Crime Laboratories and called a DNA expert because the evidence was not beneficial to, or consistent with, the State's theory of prosecution, to wit: the results showed no link to Sandy as the killer and third-party DNA

suggested the presence of home invaders. Matt Quartaro, a recognized expert in DNA,[142] was called by the defense. (RR 12 – 161). He had testified approximately 80 times, predominately for the prosecution. (RR 12 – 164).

Quartaro explained that bodily fluids contain DNA and blood and saliva are rich sources; DNA is also found within skin cells. (RR 12 – 165). "Touch" DNA allows for the testing of skin or objects to discern whether DNA was transferred by a person coming into contact with an object or skin; a person can leave DNA merely by touch. (RR 12 – 165-166). If a person bathes, DNA may not always be found. *Id.* Not surprisingly, it is expected that a homeowner's DNA would be found in their own home. (RR 12 – 166-167).

Quartaro identified Defense Exhibit 15, the HCSO Evidence Log, prepared by Carpenter. (RR 12 – 168). Numerous "swabs" for potential DNA were collected from the scene including buccal swabs ("reference or known samples") from all family members at the scene. (RR 12 – 169, 171; Defense Exhibit 15). Trace evidence, including "pickings of hair" and"tape lifts" were collected from Jaime. (RR 169-172). Swabs of Sandy's left and right hands were collected. (RR 12 – 172). Swabs of a suspect's hands are taken "to see if there was any evidence, any trace evidence, any

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[142]He qualified as a DNA expert in seventeen states as well as the territory of Guam. (RR 12 – 164).

DNA evidence that was present…." (RR 12 – 172). Fingernail scrapings of both Sandy and Jaime's hands were collected. *Id.* Scrapings can capture DNA lodged underneath fingernails during a struggle, and scratching or contact between parties; DNA can get lodged underneath the fingernails *even if hands have been washed*. (RR 12 – 181).

The forensic results of a tape lift and picking from Jaime's right hand showed the presence of animal hair; on the front of his legs and feet were dirt, debris, animal hairs, body hairs, and various hair fragments, including possible pubic hair. (RR 12 – 177-178). His front right torso, arm, and back of his body had dirt, debris, and animal hairs. (RR 12 – 178-179).[143] The results of analysis on Sandy's fingernail scrapings showed only Sandy's DNA under her fingernails and the results on Jaime's fingernail scrapings showed only Jaime's DNA, which Quartaro stated was not surprising. (RR 12 – 181). He confirmed that if the victim bled and blood got underneath the assailant's fingernails, then scrapings can determine if the victim's blood or DNA was present. (RR 12 – 182).

Detectives retrieved several items from the Melgar residence on December 26, 2012 when they were called back to the scene by Elizabeth Melgar. These were

[143]As was explained *supra,* this is consistent with Sandy's statements that Jaime checked on the barking dogs in the backyard.

submitted to the laboratory, but were never subjected to *serology* testing for bodily fluids and blood. (RR 12 – 184-185). A "mixture" of DNA denotes the presence of DNA from more than one person. (RR 12 – 185). The analysis established the following:

- State's Exhibit 667: **backpack** from garage containing Xbox and jewelry; presumptive test for blood on backpack – negative but possible hairs were observed (never tested). (RR 12 – 186-187, 197). DNA - mixture from at least three individuals, one male but the quality of DNA was insufficient for comparison. (RR 12 – 188);

- Item #6: **Gears of War game case** from backpack; presumptive test for blood was positive; partial DNA profile obtained. (RR 12 – 189-191;

- Item #8: **Gears of War booklet** from backpack; presumptive test for blood was negative. DNA mixture of at least two individuals, at least one male. (RR 12 – 189-191). DNA samples from Sandy and family were excluded. *Id.;*

- Item #23: **jewelry** from backpack; partial DNA profile from single source, ***unknown female No. 1***; DNA samples from Sandy and family were excluded. (RR 12 – 192). **A comparison to DNA obtained from jewelry boxes from the master vanity, SW 28,–established a match to DNA of *unknown female No. 1*.** (RR 12 – 193-194). While possible, Quartaro could not say if unknown female No.1 could be Elizabeth

Melgar without having her DNA profile to compare. (RR 12 – 220); [144]

- Item #28: **multi-colored scarf piece;** hairs present (not analyzed); presumptive test for blood was negative. (RR 12 – 195-197). DNA–mixture from at least three individuals, at least one male; no comparisons could be made to reference samples. (RR 12 – 196-197);

- Item #32: **purple cloth tied around Sandy** (State's Exhibits 571 and 572); possible hairs (not analyzed). Partial DNA results obtained–no comparisons could be made. (RR 12 – 198-199);

- Item #38: **a glove**–presumptive test for blood was negative; partial DNA results obtained but no comparisons could be made. (RR 12 – 199);

- Item #39: **white blouse from Jacuzzi**; possible hairs (not analyzed); insufficient information to compare or no DNA results obtained. (RR 12 – 199-200). As far as the presence of blood on blouse, nothing reported. (RR 12 – 200);

- Item #43: **knife (blade)** from Jacuzzi; presumptive test for blood on blade positive; DNA- single-source consistent with Jaime. (RR 12 – 201). DNA samples from Sandy and family excluded. *Id.;*

- Item #44: **knife handle;** presumptive test for blood was positive; mixture from at least two individuals, major profile consistent with Jaime. (RR 12 – 201-202). DNA samples from Sandy and family excluded as a major contributor; not enough information from the minor

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[144]The prosecutor suggested the DNA profile for unknown female no.1 could be Elizabeth and her husband (suggesting they crammed items into the back pack after detectives told them to go to the house to look for stolen items.) (RR 12 – 223). Beyond having utterly no evidence supporting this, the backpack clearly was in the garage in the very location it was ultimately found several days *before* Elizabeth's trip from Europe when Carpenter conducted his investigation but failed to see it although he took a photograph of the same.

component to make comparison. (RR 12 – 201-202).[145] As to whether Sandy could have been a minor contributor, there was "*not enough data there to make that conclusion*." (RR 12 – 225) (Emphasis added). Or, in the words of the report itself, "*[n]o interpretable results were obtained from the minor contributor of this DNA*." (Defense Exhibit 23, p. 10) (Emphasis added);

- **Master bathroom sinks (south)**: partial DNA profile obtained; Sandy could not be excluded as a possible contributor. (RR 12 – 202-203). Quartaro explained it would not be unusual for a home owner's DNA to be in their sinks. (RR 12 – 204). In any event, this did not establish that the DNA necessarily was from Sandy's blood as opposed to her other bodily fluids because there was no testing for blood. (RR 12 – 203-204). All of the reference samples, **including Jaime Melgar, were excluded**. *Id*.;

- **Master bathroom sinks (north)**: partial DNA profile obtained; could not be determined if from two or more individuals. No comparisons could be made. (RR 12 – 204). *There was no indication in the analysis performed that any blood was present.* (Defense Exhibit 23 at 12);

- Items 51 and 54 of Defense Exhibit 23: **Jacuzzi**; single source DNA profile excluded everyone but Sandy as possible contributor. (RR 12 – 205). The fact that Jaime's DNA was not found did *not* mean he wasn't in the tub; only that his DNA wasn't found on the two swabs obtained (SW 24 of the illumination of tub (Blue Star) and SW 27 of the LCV stain in tub). *Id. See* Defense Exhibit 15. Clearly, these DNA swabs - 24 and 27–were taken at "areas that were illuminated with Bluestar" which

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[145]Quartaro was asked by the prosecutor if it was possible that Sandy could have washed blood off of her hands and body and he stated it was; however, no evidence was offered that she had, in fact, done so and, as demonstrated, *supra,* certainly nothing tested at the scene established the existence of Jaime's blood in any of the sinks, showers, tubs, or anywhere except the interior of the Jaime's closet, and immediate area outside of his closet and the knife. (RR 12 – 227-230). Moreover, there was no evidence of a "clean up" of the scene. *See* discussion, *supra.*

was on the ***rim*** of the tub. (RR 4 – 159-161; State's Exhibit 4,[146] 455, 456). No other area of the tub was swabbed. (Defense Exhibit 15). (The prosecutor contended that the absence of Jaime's DNA meant he was never in the tub. This assertion is not only specious, it demonstrates the lengths the prosecutor went to draw false and dangerous conclusions in this trial);

- Items Nos. 80 and 81: **Sandy's hands (left)**; partial DNA profile obtained from at least two individuals; major contributor was a female and Sandy could not be excluded. (RR 12 – 205-206). All others excluded as possible major contributor; not enough data to make comparisons as to the minor contributor. (RR 12 – 206). **(Right)**; a *presumptive test for blood was negative*; DNA results were the same as the left hand. (RR 12 – 206). In the final analysis, ***Sandy's DNA was not found to be mixed in Jaime Melgar's DNA ("[t]here was no sample here where they're both included." (RR 12 – 207)*** **(Emphasis added).** ***And, Sandy's DNA was not found on Jaime's body, on anything tied around his body, or on anything in the closet or immediate area outside of his closet (chair and bench) where the murder occurred. Id.***

However, samples of alleles **foreign** to Sandy, Jaime and their family were found in the DNA analysis:

- **Backpack**–at least one contributor was male, four alleles present that could *not* have been contributed by Sandy or Jaime. (RR 12 – 208);

- **Gears of War case** –two alleles present were not consistent with Sandy or Jaime. *Id;*

- **Gears of War booklet** –at least one male present; all reference samples excluded; two alleles were not consistent with Jaime or Sandy. *Id*;

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[146]The prosecutor erroneously stated State's Exhibit 3. (RR 4 – 159).

- **Multi-colored scarf piece** –all samples contained at least one allele that could not be contributed by Sandy or Jaime. (RR 12 – 208-209);

- **Closet doorknob–**Item 59–three **foreign DNA types present** (RR 12 – 209);

- **Guest bathroom doorknob** –at least two **foreign** alleles. *Id*;

- **Left side nightstand** –two **foreign** alleles. *Id;*

- **Open dresser drawer** –six alleles **foreign** to Sandy and Jaime. *Id;*

- **Office doorknob** –Item 65–four alleles present and four unknown alleles. *Id;*

- And besides **"unknown female No. 1**", a **foreign** allele was present on a **jewelry box**. *Id;*

XII. Sandy and Jaime's loving relationship and their reputations for being peaceable, even-tempered and non-violent

Detectives found nothing negative in Jaime's or Sandy's background. (RR 8 – 95-98; 10 – 141-143). This fact permeated the trial. Scott Lacy observed the Melgar's garage door open in the early hours of December 23, 2012 after having spoken to them on December 22, 2012 as they were readying to go to dinner for their anniversary. (RR 10 – 231). They appeared happy and said family was coming over the next day. *Id.* Odile Robertson, the Melgar's neighbor, testified that she never noticed any fighting or strong words between Jaime and Sandy or any aggression on Jaime's part towards Sandy. (RR 7 – 17).

Elizabeth testified she was very loved and Sandy was a wonderful person–"she is what you would imagine when you hear the word 'mother'". (RR 12 – 31). Elizabeth characterized Sandy's temperament as "calm", "rational", and "even keeled." (RR 12 – 34). She had never seen her mother be calm and level headed and then suddenly explosive. (RR 12 – 37). Her parents were married 32 years and their anniversary was December 12th but they did not celebrate that day because Sandy was unwell. (RR 12 – 34-35). Elizabeth confirmed her parents put a lot of emphasis on their marriage and were very proud of that. (RR 12 – 35). She described her parents relationship as "very loving" and "[t]hey were very happy." (RR 12 – 36). She often "caught" them hugging and kissing in private. (RR 12 – 36). They got along well, were sweet with one another, and spent most of their time together. *Id.* "Jaime took good care of her mother." *Id.* Like most married couples, they had verbal disagreements mostly concerning Elizabeth's earlier youthful rebelliousness. (RR 12 – 36-37).

The Armstrongs and Rocio Reib testified that Jaime and Sandy were never physically or verbally abusive. (RR 11 – 198; RR 12 – 36-37, 237-238). Sandy was "the calmest person." *Id.* They had never seen her "lose it." (RR 12 – 127). They "were very much in love....tender and affectionate, good parents, good friends"; Sandy was "very kind and patient and mild mannered"; she was a peaceable person.

(RR 12 – 234, 235-236). Their relationship was like "two peas in a pod. Just so much together."(RR 12 – 235-236). Jaime took good care and paid close attention to Sandy because of her poor health. (RR 12 – 237-238).

Anniversaries were particularly important because the Melgars were Jehovah's Witnesses and believed that marriage was a commitment for life and "a very important commitment to each other." (RR 11 – 198). They believed marriage was created by God "to be forever, to be together, stay forever, to love each other." *Id*.[147]

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[147]The prosecutor's tact in cross-examining Rocio Reib was to attack her religion and that of the Melgars. Ms. Reib and the Melgars were devout Jehovah's Witnesses and Jaime was an elder in the church; they attended services twice weekly. (RR 12 – 13). Ms. Reib agreed that divorce was looked upon poorly by the church but was allowed if adultery or domestic abuse occurred. (RR 12 – 10). The prosecutor asked her if she thought Jaime was cheating on Sandy and she emphatically stated she did not. (RR 12 – 11).

Then, without *any evidentiary basis whatsoever*, the prosecutor asked Ms. Reib, "[s]o if Sandy was unhappy in her marriage, she just has to stick it out, right?" (RR 12 – 10). Ms. Reib disagreed first that Sandy was unhappy in her marriage and also disagreed that she would "just have to stick it out"; if Sandy was unhappy there were elders and a support group which provided counseling. (RR 12 – 10-11).

Not content with Ms. Reib's responses, the prosecutor demeaned and ridiculed the beliefs of Jehovah's Witnesses in the eyes of the jury: "we don't see any Christmas decorations in the house because Jehovah (sic) Witnesses **don't respect or acknowledge Christmas, right?**" (RR 12 – 12) (Emphasis added). Ms. Reib was then grilled on whether Jehovah's Witnesses celebrated Christmas, New Year's Eve, Easter, Mother's Day, Father's Day, birthdays, Thanksgiving, Flag Day, Independence Day, Saint Patrick's Day, Valentine's Day, Halloween or Hanukkah to which Ms. Reib replied that they did not; nor could they join the Boys or Girls Scouts, vote or "pledge allegiance to your country or your flag." (RR 12 – 13-14, 16, 21).

The prosecutor questioned Ms. Reib about "disfellowing"; Ms. Reib explained that Jehovah's Witnesses believe that church elders must "disfellow" members who break church rules. (RR (continued...)

Sandy was not materialistic; she was modest and not interested in shopping for dresses, jewelry or buying extravagant things. (RR 11 – 191).

(...continued)
12–16). Disassociation from the congregation means that if a person does something against the Bible, members and friends can speak with them and encourage them to come back but cannot associate with them beyond that. (RR 12 – 17). Any disfellowship or "disassociation from the congregation" is temporary and the person is allowed back into the congregation. (RR 12 – 17).

The prosecutor then asked Ms. Reib, "[s]o you also believe that the dead are in a state of unconsciousness, right?" (RR 12 – 18). Defense counsel objected again on the basis of relevance and at a bench conference the prosecutor contended that the inquiry was relevant to–

> Motive for what she did, ostracized from her church to prove and establish she killed her husband and make it seem like somebody else did it. In fact, if she divorced her husband and is allowed back, or disassociated, they don't allow divorce. *So it goes to death as the motive as to why she killed him.*

(RR 12 – 18-19) (Emphasis added). The trial court overruled the objection. *Id.* The prosecutor asked Ms. Reib if "Jehovah (sic) Witnesses believe that the dead are in a state of unconsciousness" and she replied, "[c]orrect, we *can* believe that." (RR 12 – 19) (Emphasis added).

In final argument, the prosecutor theorized:

> [s]o if you don't get along with your husband and want to get a divorce, you can't. You're stuck. And you have to hang around with all the people that are also Jehovah (sic) Witnesses, you can't hang around with anybody else. You have to have those people.
>
> So - - also, they believe that – one of the witnesses testified that they believe Jaime is asleep. So it's kind of like no harm, no foul. I don't have to - - if I get divorced, I get ostracized, and I can't talk with my friends. But if I kill him and nobody finds out, I'm not ostracized and he's just asleep and nobody finds out and I still get the money. And that is part of the motive.

(RR 13 – 159). As will be discussed, *infra,* the prosecutor's "motive" argument to the jury with respect to the beliefs of Jehovah's Witnesses is not only nonsensical, it is *devoid* of *any* evidentiary foundation.

XIII. Critical examination of the "investigation" in this case by former veteran homicide detective, William "Billy" Belk, an expert in homicide investigations, shows bias and "unconscionable" shortcomings

A. Background and experience

William "Billy" Belk, a former veteran Homicide Detective with the Houston Police Department for nearly thirty-two years and licensed attorney, was called as an expert witness by the defense. During his almost 22 years in the Homicide Division, he was initially assigned to the Sex Crimes Unit; afterwards he was moved to the murder squad and investigated murders, capital murders, kidnappings, and aggravated assaults. (RR 11 – 17). He served in the Crime Scene Unit as a supervisor and also helped start the Cold Case Squad. (RR 11 – 17-18). Even today he is asked to consult on old cases he worked on years ago. (RR 11 – 18).

He had extensive training over the course of his police career in homicide investigations, interview and interrogation techniques, crime scene investigations, evidence collection, including the observation, preservation and collection of DNA evidence. (RR 11 – 18-19). He estimated participating in approximately 500 sexual assault investigations, many of which had a component of home invasion, and had investigated approximately 500 murder cases. (RR 11 – 20-21). He also received a

special assignment in consultation with the Harris County DA's Office to oversee the post-conviction DNA testing in over 400 felony cases. (RR 11 – 23-24).

He testified many times on behalf of the prosecution including cases tried by this prosecutor. (RR 11 – 22). To his knowledge, she never hesitated to put him on the witness stand or vouch for his credibility. *Id.* He had ***never before*** testified on behalf of a defendant in a criminal trial. (RR 11 – 24).[148]

B. Billy Belk examines all relevant evidence

Mr. Belk reviewed the offense report and all discovery obtained from the prosecutor or via subpoena/court order by defense counsel. (RR 11 – 25-30). He examined and photographed all of the prosecution's evidence, inspected the Melgar residence and interviewed witnesses. (RR 11 – 30).

C. Billy Belk finds law enforcement's lack of both objectivity and impartiality infects the investigation

Mr. Belk testified it is absolutely essential in conducting criminal investigations for investigators to remain neutral, objective and impartial, and the failure to do so could result in evidence being missed, and leads and possible suspects not being pursued; moreover, the loss of objectivity early on could be detrimental to

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[148]Mr. Belk was compensated $10,000.00 for his time. Up to the point of his testimony, he logged 254 hours which came out to be approximately $38.00 per hour. *Id.* He sat through the entire trial and observed the testimony of every witness. (RR 11 – 30).

and taint the process going forward. (RR 11 – 31). Of particular concern was when investigators formed an opinion about a suspect and then tried to make the evidence fit that theory. (RR 11 – 31-32).

He was familiar with the HCSO Homicide Division's "SOP" stating the first goal was "to investigate every case as if it was the only case." (RR 11 – 32). As a seasoned, highly experienced homicide investigator, he did *not* believe that the murder of Jaime Melgar was conducted as if it "was the only case." *Id.* He saw many serious shortcomings in this investigation–which he characterized as "**unconscionable**." (RR 11–33). He saw several indications that the investigators in this case tried to make the facts fit their theory of the case. (RR 11 – 33). They had only one theory and the evidence supporting a home invasion "was never really investigated." (RR 11 – 51).

He confirmed that Carrizal called a Chief Prosecutor around 1:00 or 2:00 a.m. (December 24th) "to get charges filed"; based on his (Belk's) experience, "you don't call the Chief of Special Crimes if you're not wanting to get a charge filed..." (RR 11 – 35). Carrizal's offense report reflected that the charges *were not accepted. Id.*

D. Law enforcement ignores the obvious and fails to investigate the open garage door and unlocked interior door to the house

As Mr. Belk explained, "you go with the obvious"; "[e]verything pointed to the garage door (being) open. And to ignore that, you're ignoring common sense." (RR 11 – 33, 35-36). He did not believe there was sufficient investigation into either the open garage door[149] or the unlocked (interior) door. (RR 11 – 35-36). It was apparent after reviewing Sandy's interrogation that the investigators basically "blew off" the fact that the interior garage door did not lock; unlike the other doors and windows, evidence was not collected nor photographs taken of it. (RR 11 – 37-38).

The detectives wanted that door locked to fit their theory of no forced entry. A glaring example was Dousay's interview of Marissa Melgar where – in a leading, suggestive manner – he insisted the interior garage door was *not unlocked* when only moments before she had said she didn't know if that door was locked because it was her father who went into the garage, not her. (RR 11 – 39-40). *While they knew Herman entered the house this way, he was never asked if it was locked or not.* (RR 11 – 40-41). Herman, of course, testified it was not locked when he entered the residence. *See* discussion, *supra.*

E. Law enforcement's efforts to gather critical scene evidence is wholly inadequate

[149]Mr. Belk believed the investigators did not fairly consider alternative ways it could have been opened besides by use of force including using a remote control from the vehicle parked in the driveway, using a "Slim Jim" or by using a "scanning" device that opened older garage doors. (RR 11 – 42-43). They obviously never considered Jaime accidentally opened it.

Mr. Belk testified that efforts to gather critical scene evidence is wholly inadequate. For example:

- Not all dresser drawers that were pulled out in the master bedroom or Elizabeth's bedroom were swabbed for possible DNA; some were only swabbed in one place (RR 11– 44-45);
- No DNA testing was done on the wallets or Sandy's purse on the bed (all found without cash); "[a] competent. . . investigator would have done so." (RR 11– 45);
- No DNA testing was done on the cord dangling in the living room or on the homemade "rabbit ears" for the T.V. in the master bedroom; "it appears that something was removed. (This was) a logical location to collect evidence." (RR 11 – 54).
- Fluorescein testing should have been done on all tubs and sinks. (RR 11 – 52);
- The bloody safe handle was not swabbed for DNA. (RR 11 – 52-53);
- Contrary to Carrizal's sworn testimony that every house on the block was canvassed, that simply was untrue. (RR 11 – 55). His offense report revealed a number of homes were canvassed but the residents were not home *and no additional effort was made by investigators to contact these individuals.* (RR 11 – 55-56).

Mr. Belk thought it was significant that:

- There was no evidence to indicate the presence of Jaime Melgar's blood (or anyone else's) in the shower or Jacuzzi except on the knife. (RR 11 – 48);
- There was no indication of Jaime's blood *anywhere in the bathroom*. (RR 11 – 48);
- If Sandy was the murderer, removing bloody clothing would result in the transfer of blood causing transfer patterns; no discarded bloody clothing or evidence of blood transfer was found anywhere in the house. (RR 11 – 52-53).

F. Law enforcement fails to investigate

Mr. Belk saw very little effort to follow up on Chad Sullivan as a possible suspect. (RR 11 – 57). Contrary to Carrizal's testimony, he confirmed it was "very common, especially on homicides, for the offender to come back and watch what law enforcement is doing, and they had the name." *Id*. Sullivan had a rich history of pawning kitchen knives, Gear of War games, Xboxes, small televisions, jewelry, and radar detectors–all of which were particularly relevant to this case. (RR 11 – 58).

Sandy and Jaime's relationship should have been thoroughly investigated but they failed to do so. (RR 11 – 69-70). Cell phone records should have been examined to identify individuals and interview those who had contact with Sandy and Jaime. (RR 11 – 71-72). Mr. Belk saw no evidence of any act of violence between Sandy and Jaime; most tellingly, no evidence from any source showed Sandy had the capacity or desire to forcefully and violently murder her husband. (RR 11 – 72-73).

G. The interrogation of Sandy–this was not an interview

Mr. Belk was familiar with the Reid Interrogation Technique; there are *separate* techniques for conducting interrogations and interviews. (RR 11 – 58-59). The Melgar family members were interviewed; open-ended questions were asked to elicit information. *Id.* Sandy was asked leading questions by interrogators with a

theory and agenda. *Id*. She was frequently cut off from answering questions and was asked two questions at once which was inappropriate, because it's not clear which question was being answered. (RR 11 – 64-65). As far as "signs of deception", nothing in Sandy's mannerisms suggested she was being untruthful or evasive; the detectives, however, were deceptive. (RR 11 – 66-67).

Sandy kept her hand on her head and occasionally wiped her face which suggested to Mr. Belk that her head hurt and she was crying. (RR 11 – 66-67). She was inappropriately denied a call to her daughter; the detectives never considered that Sandy was a victim who was traumatized; at the end of her interrogation, she was actually taunted. (RR 11 – 67-69).

H. Nothing about Jaime's murder is inconsistent with a home invasion

Mr. Belk believed Jaime was brutally murdered and there was a significant struggle in the closet; there was no evidence that the stabbing occurred elsewhere, nor any evidence that the struggle occurred in front of the closet. (RR 11 –77-78, 101-102).[150] Mr. Belk had prior experience with defendants on drugs and involved in brutal murders. (RR 11 – 78). The evidence supported the conclusion that there was

[150]He confirmed a large pillow was between the door and nightstand which would have prevented the door from hitting the nightstand. (RR 11 – 104).

more than one perpetrator and was consistent with "third parties" committing this crime. (RR 11 – 78, 114).

There was "[n]o doubt whatsoever" that the perpetrator and Jaime were "in close contact for a prolonged period of time to take 50 blows"– with Jaime actively attempting to ward off the blows. (RR 11 – 80-81). Blunt trauma could have been caused with fists or the butt of the knife; abrasions and contusions on Jaime's legs meant he could have been kicked, and the assailant might have been on top of Jaime inside the closet. (RR 11 – 81-82).

Due to the number of blows and force involved, it was essential to closely examine the suspect's hands. *Id.* In examining photographs of Sandy's hands, he saw **nothing consistent with Sandy being able to inflict those kinds of injuries** or being involved in this violent physical altercation. (RR 11 – 82). As Mr. Belk explained,

> [H]er nails are all intact and not broken. I'm not seeing–with the handling of a large blade knife where you're using significant force that goes 3 or 4 or 2 or 3 inches deep, hitting vital organs. You would expect to see bruising from handling the weapon or knife. You would potentially see cuts from the knife because if you imagine a stab wound, every stab wound gets a react(ion) from the blood. And human blood is very slimy, slippery, so it's hard to hold a knife especially when you're in that close contact without the knife slipping and cutting you, or getting a cut from the knife.
>
> So it's essential to look at bruising, whether there's cuts, significant injuries, too. Because in my opinion, the assailant's going to have significant injuries because of the close contact, hand-to-hand contact.

(RR 11 – 82-83). He saw no bruising on her hands and only a small scratch on the top of Sandy's left thumb which was *not* consistent with the type of injury associated with the attack. (RR 11 – 83-84). Based on Mr. Belk's experience as an internal affairs officer investigating police misconduct, the bruises on Sandy's biceps were consistent with her being grabbed by the arms from behind by the person who tied her up. (RR 11 – 86-88).

The absence of blood elsewhere in the house was not inconsistent with home invaders; however, if the murderer cleaned themselves up inside the house there would be traces of that. (RR 11 – 89). ***If an effort had been made to clean up the crime scene itself, there would be smear or wipe patterns on surfaces which would be visible with the application of fluorescein but no evidence of that or articles used to clean up blood was found***. (RR 11 – 89-90).

He did not think it was plausible that Sandy tied herself up based on how she was found bound in the closet, her health issues, and his experience in trying to tie himself up. (RR 11 – 91-92).[151]

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[151]The prosecutor tied herself for the jury but it was never established that how she did so was remotely similar to how Sandy was found tied up by Herman and Maria Melgar. (RR 11 – 175). Both witnesses testified Sandy "was tied up very tight, and they couldn't untie her" and had to use scissors to cut her bindings off. (RR 11 – 177-178). The position of Sandy's wrists and arms when she was found tied up was different than the way the prosecutor demonstrated for the jury. (RR 11 (continued...)

Mr. Belk did not believe that the crime scene was staged; each scene is unique. (RR 11 – 100-101). He had seen organized offenders who do not tear up a crime scene; he had seen drawers pulled out and beds flipped by juveniles; it was rare in homicides. *Id*. To suggest staging because a drawer was not dumped out was irresponsible at best. *Id.* Because the backpack was left behind, full of items taken from the house, did not mean there was no home invasion; he had investigated crimes where items were gathered but not removed due to an interruption from a person walking up, or because of an unexpected event like a death, and the decision was made to leave. (RR 11 – 106, 108-109).

He was aware of evidence that property was stolen. (RR 11 – 109-110). Items frequently taken and pawned or turned into cash were jewelry, electronics, cash, credit cards, cell phones, tools, and televisions. (RR 11 – 110-111). The fact an item wasn't taken did not mean there was not a home invasion. (RR 11 – 111). Home invaders do not typically park in front of the residence; sometimes they arrive by foot.

(...continued)
– 178). **Of paramount importance, the marks on Sandy's arms as evidenced by Defense Exhibits 2642, 2643, 1960, 1959, and 1958 were consistent with what Herman and Maria Melgar described as opposed to how the prosecutor tied herself up based on the fact that the ligature marks were higher up on Sandy's arms and not restricted to the wrists.** (RR 11 – 178-179).

(RR 11 – 112). Home invasions also occur where the homeowner is assaulted or killed with a weapon found in the premises. *Id.*

XIV. Forensic examination of computers and cell phones shows no evidence of planning, research, financial incentives or extramarital affairs

Eric Devlin, an expert in digital forensics, was called as a defense witness. As a prosecutor, he started the Harris County DA's Office Internet Crimes Against Children Task Force; then founded Lone Star Forensic Group specializing in the examination of stored electronic information on computers, cell phones, etc. (RR 13 – 96-97). He obtained exact copies of computer hard drives from devices seized in the case which had been examined by law enforcement. (RR 13 – 98-99). (Carrizal agreed that nothing from law enforcement's examination advanced their case.) (RR 10 – 125-126).

Devlin performed a full digital examination for evidence of motive, planning, research, or intent to commit homicide. (RR 13 – 102; Defense Exhibit 41 at 2). He testified that cell phones and computers have "an absolute wealth of information" which is very difficult to remove or delete without being detected. (RR 13 – 99). Using tools the FBI employs, Devlin confirmed that "everything that somebody has searched . . . even if you clear your history, is recoverable." (RR 13 – 103-104).

He used a more extensive list of search terms than the HCSO; his terms included: "staged", "staged crime scene", "stage a crime scene", "hired killer", "coverup", "get away with murder", "clean a murder", and "chair." (RR 13 – 113). Devlin explained: "we look for motive, money, infidelity. . . life insurance,. . bank transfers. . ." (RR 13 – 106). He only got "hits" for *health* insurance, not life insurance and searched for "knots" and "knot tying". (RR 13 – 107). He saw no indication of a "boyfriend, girlfriend." (RR 13 – 105). Nothing gave him pause. (RR 13 – 107).

As his report reflected,:"[E]xaminer has located **no evidence of planning or research prior to the homicide** . . . **no evidence of financial incentives or any indication of extramarital affairs**." (Defense Exhibit 41 at 66) (Emphasis added).

XV. The prosecutor uses final argument as a substitute for evidence

In final summation, the prosecutor seized upon the strategic advantage of arguing last (without having her conjecture subjected to the crucible of cross-examination) by injecting her personal opinions and theories as to how the jury could conclude Sandy "could be" the killer and "could have" murdered her husband. Her arguments went beyond the record and were not based on evidence adduced at trial.

A. The chair and the bench scenario espoused by the prosecutor for the first time in final argument is predicated on pure supposition

The prosecutor let it all "hang out" with her chair and bench theory. She opined Sandy lured Jaime into the bedroom with sex toys under the pillow (although not visible); Jaime "*probably* bought into whatever Sandra was planning", "*maybe* she was going to give him some kind of massage." (RR 13 – 165-166) (Emphasis added). She asserted there must have been *something* over the bench that prevented blood from getting on it and *probably* the knife was underneath the *something*; "and *maybe* she's massaging his neck, or whatever, *I don't know what.*" (RR 13 – 166) (Emphasis added). "*She was probably naked because of the sex toys, sex games, whatever.*" (RR 13 – 167) (Emphasis added). And then, Sandy pulled the knife out–

> *while he isn't looking, she makes a strike straight up all the way to his neck. That's where the first strike is. Jaime, of course, gets up to try and defend himself, turns around, and that's when she gets him on the thumb. And that's when the blood starts spurting out onto the chair.* ***And that's what Cele Rossi is talking about when she's talking about, this was the first strike.*** *And then she had him. There was no place for him to go. As you saw there's only 2-feet wide and not that deep. He was just stabbed to death. She had the knife. And if you think about it, the deepest stab wound was 3–inches thick–or deep, rather. He was only 125 pounds, and he wasn't 6-foot 5-inches tall. And that's how it happened, that's how she did it. That's not something that somebody is, like tall and strong, they're going–they're going to be going all the way to the hilt. Hers were not that deep. That fits in with her height, fits in with her weight.*

(RR 13 – 166). (Emphasis added).

Beyond the fact that the "maybe's", "probably's", "something's", and "I don't know's", demonstrate, in and of itself, that this tall tale is a total concoction, the prosecutor, once again, tried to get where she wanted to go by misrepresenting the evidence to the jury. Her misrepresentations were contrary to her own experts; Rossi never testified that either inflicted injury was the "first strike"; in fact, when asked on cross-examination about the various sharp force injuries, "you can't say in *what order* these injuries took place?" she resolutely replied, "*absolutely not.*" (RR 9 – 100) (Emphasis added).

The scenario dreamed up by the prosecutor also flies in the face of "Rossi's" testimony as to where Jaime had to have been located when he received the significant sharp force injury to his right hand. It was clear that his right hand could not have been past the threshold of the closet (due to the presence of dripped blood at that location and not anywhere else outside the closet); and in addition, his hand would have had to be facing the chair at the time of the arterial projection of blood. (RR 9 – 41). He could not have gotten up from the chair and turned around to defend himself at the time of the right hand injury; rather, he would have had to get up from the chair, move to his right, then enter the closet, position himself where his right hand was at the threshold of the door at the time of the infliction of that wound. This is simply at odds with the theory espoused in final argument.

And why was blood on the bench? If Sandy supposedly hid a knife under "something" on top of the bench, and pulled it out to stab Jaime, the knife (or the "something" it supposedly was under) would not have been bloody *before* it was used. And yet, blood is on the bench that didn't come from the knife and does not match the arterial spray on the bed sheet and the chair.

The prosecutor next improperly embellished her supposition by contending that there was a necessary correlation between the *depth* of Jaime's stab wounds and the relative brawn of the killer: since his wounds only penetrated 3 inches, the killer *had* to be Sandy because "*[t]hat's not something that somebody is, like tall and strong, they're going–they're going to be going all the way to the hilt. Hers were not that deep. That fits in with her height, fits in with her weight.*" (RR 13 – 166-167) (Emphasis added). This is sheer sophistry. There was utterly no evidence to support these statements, certainly no biomechanical or pathologist testimony. In fact, what *is* in the record from her own experts, refutes it. Among the numerous sharp force injuries inflicted, four stab wounds–numbers 3, 4, 8, and 10–not only perforated the skin, they penetrated the underlying anterior chest musculature, ribs, and finally struck the costal cartilage (chest plate). (State's Exhibit 677 at 4-5). It would have taken considerable force to inflict these injuries. Forensic literature establishes that

the term "'extreme force' can rightly be used when the blade of the knife has penetrated bone."[152]

Why didn't the prosecutor ask Dr. Pinneri that question? Why didn't she ask her if the wounds on Jaime's neck were consistent with him sitting and the killer drawing the blade across his neck while standing behind him? Why didn't she ask Dr. Pinneri to offer an expert opinion on the sequence of sharp force injuries inflicted? Was it because she did so outside the presence of the jury and didn't like the answer?

If Sandy was naked and lured Jaime into the bedroom, why would he wrap himself in a towel and put on her slippers merely to walk a few feet to the bed? (Far more consistent and reasonable is what Sandy told the detectives– Jaime wrapped a towel around himself and slipped on her slippers because he was going outside for the dogs.)

Finally, if Sandy was "massaging his neck" while Jaime was seated, before she supposedly drew a knife across his throat and chest while standing behind him, as the prosecutor urged the jury to buy, how could she have possibly physically fit between the chair and the bench to do that? State's Exhibit 1 shows that the distance from the east wall of the master bedroom to the back corner of the bench was 6' 9"; the

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[152]*Sharp edged and Pointed Instrument Injuries,* William A. Cox. M.D., Forensic Pathologist, https://forensicmd.fileswordwordpress.com/2011/07/sharp-edged-and-pointed-instrument-injuries.

distance from the east wall to the back of the chair was 5' 5". The difference between the two is 1' 4". An examination of the bench–State's Exhibit 729–will show that it is 11" wide. That means there was only 5" at most for Sandy to position her body between the bench and the chair in order to stand behind Jaime. (*See* State's Exhibits 275 and 289, depicting the relative positions of the chair and bench.) Additionally, how is she able, in such a tight space, to massage his neck and suddenly pull out the knife that was supposedly under "something" on the bench behind her? It is not possible.

B. The "cloudy nail" argument, totally lacking in evidentiary support, is clearly an attempt by the prosecutor to mislead the jury

The prosecutor was particularly excited when she wrapped up her final argument by telling the jury: "[t]he last thing I want to talk to you about is something I've been saving":

> **I didn't realize–but the Defense knew about it**, too–until I looked at the pictures *because they have several pictures of her hands,* ***but only one picture of this hand when it comes to this hand***. And I wonder, why is that? I know the reason. The reason is because if you look at her hands and compare them, you can see a big difference. You probably can't see them here. Let me walk it by you. This is State's 535 and 533. Her right hand, this hand, look at the nails compared to the other hand. Cloudy, as if with her right hand she had used a harsh detergent, some harsh cleaner. She's right handed after all.

(RR 13 – 167-168) (Emphasis added). Once again, but not surprisingly, the prosecutor intentionally misstated the evidence and misled the jury and the court.

Obviously, when the prosecutor argued that the defense had several pictures of her hands "but only one picture of this hand", reference was being made to photographs offered by the defense and admitted into evidence of Sandy's *right* hand. As the record reflects, however, the prosecution offered into evidence four (4) photographs of Sandy's hands: State's Exhibits 533 (left dorsal), 534 (left palmer), 535 (right dorsal), and 536 (right palmer). The defense offered into evidence ***five*** photographs of Sandy's hands: Defense Exhibits 1948 (left palmer), 1949 (left palmer), 1950 (left dorsal), 1952 (right palmer), and 1954 (right dorsal). So, not only did the defense offer *more* photographs of Sandy's hands than did the State, it offered ***two*** photographs of Sandy's right hand–not one, as the prosecutor misrepresented to the jury–and offered into evidence the **very photograph that the prosecutor contended showed "a big difference."** Moreover, defense counsel cross-examined Carpenter *specifically* about the photographs he took of Sandy's hands, *including* Defense Exhibit 1954. (RR 5 – 170, 173).

The prosecutors' egregious statement, "the Defense knew about it, too" is a frontal shot that negatively impugned and maligned defense counsel as well as Sandy in the eyes of the jury–suggesting the defense was attempting to withhold evidence

because it was supposedly unfavorable. This is yet another example, and maybe the starkest one from this trial, where the prosecutor, in attempting to win at all cost, floats a theory for the jury to grab onto that has utterly no evidentiary basis.

Beyond the fact that it can reasonably be disputed that the nails on Sandy's right hand nails appear different than the nails on her left hand, there is no evidentiary support or underpinning for the prosecutor's theory. It rests on a bed of make–believe. Assuming there is "cloudiness", what was the cause? How long had the nails been cloudy? Could there be a medical component that should be considered? Was there any scientific or forensic validation of this supposition? Why wasn't this very issue broached in the presence of the jury with CSI Carpenter, Dr. Pinneri, or "Cele" Rossi? Fingernail scrapings from Sandy's left and right hand were taken at the scene by Carpenter and the scrapings were ultimately analyzed by the DPS laboratory. (State's Exhibit 15–FS1 and FS2; *see* testimony of Quartaro, *supra*). If there was a nanogram of possible validity to the prosecutors' theory, those scrapings could have been tested for the presence of chemical/cleaning compounds, but **no such testing was ever shown to have occurred**. Again, this is pure conjecture–thrown against the wall to see if it sticks.

There **is**, however, a medical explanation in evidence that squarely addresses Sandy's fingernails. Dr. Hershkowitz testified that Dr. Granda's notes of his

examination of Sandy on December 27th showed the following observation of Sandy's extremities:"[b]oth hands and ***fingernails with mottled lesions*** *compatible with Raynaud's Phenomenon.*" (RR 13 – 31) (Emphasis added). Dr. Hershkowitz testified "mottled" describes "where it's dark and light. That's Raynauds in certain areas that are not getting that blood supply....*we already talked about the raynaud's it's because of the lupus*." *Id.* (Emphasis added).

SUMMARY OF THE ARGUMENT

The evidence presented at trial was legally insufficient to establish that Sandy was the individual who murdered her husband. She was found by members of the complainant's family on the floor of the bathroom closet that could not be opened from the inside–bound with her arms behind her back, tied tightly, and her ankles tied as well. At the same time, the complainant was found beaten and stabbed to death in the bedroom closet. Sandy was hysterical and in shock as confirmed by EMS responders. She did not have much memory of the events of the previous night when questioned by law enforcement officials either because of a seizure or a blow to the head. She had a documented history of seizure disorder (accompanied by memory loss), lupus, rheumatoid arthritis, a double hip replacement, and other serious medical issues. She complained that her head hurt during her interrogation and a close friend felt a lump on her head mere hours after she was transported home from the homicide

division. An examination by her physician less than four days after the murder revealed a superficial hematoma on the right side of her head.

Law enforcement officials jumped to conclusions and assumed she was the murderer because there were no signs of "forced entry" into the family home and she was the only person left alive. The evidence, however, showed that a garage door was open as early at 7:15 a.m. and was found open by the complainant's family and investigators. An interior door in the garage leading into the house had a lock that either did not work or was broken. Logically, this explained how the intruders entered the house, but investigators turned a blind eye to these facts because they were inconsistent with their theory of the case. The evidence established that the lead detective on the case attempted to get murder charges filed against Sandy even before the crime scene investigators had left the scene. This same detective had backdated a search warrant return and then lied about it and was found to be untruthful regarding the circumstances surrounding his employment with the District Attorney's Office. He had a bad reputation for being truthful and a sloppy work ethic in homicide investigations.

No physical or DNA evidence linked Sandy to the murder of her husband. To the contrary, DNA analysis showed the presence of third–party DNA on the premises in the very places that intruders would have touched. Crime scene investigators and

the assistant chief medical examiner testified that it was highly likely that whoever killed the complainant would have gotten blood on themselves yet no blood was found on Sandy or her clothes. The evidence affirmatively established, based on application of chemical reagents to the surfaces of the sinks, tub, and shower, that **NO EFFORT TO CLEAN UP** the crime scene had been undertaken. Sandy did not exhibit any injuries consistent with being the perpetrator. In fact, although her husband sustained over 50 blunt force and sharp force injuries, Sandy had no injuries to her hands or fingernails which would have been the case had she been the killer.

The evidence irrefutably established that Sandy and Jaime had a wonderful marriage and were very much in love. No evidence to the contrary was offered by the prosecution. A forensic examination of the Melgar's computers and cell phones showed no "trysts", boyfriends/girlfriends, or any financial red flags. The prosecutor urged the jury to convict Sandy on theories that had no evidentiary support and were based on sheer speculation and innuendo. After examining the character, weight, and amount of the evidence in this record, and applying the "rigorous" and "exacting standard" of *Jackson v. Virginia,* the jury's verdict must be overturned and an acquittal entered.

Finally, the jury engaged in misconduct by conducting experiments during their deliberations in an effort to determine whether a person could tie themselves up.

Whether Sandy could have tied herself up was a significant factual issue disputed throughout the trial. By conducting their own experiments outside the courtroom–and outside the presence of Sandy and her counsel–she was deprived of the fundamental right of confrontation and was prevented from subjecting the experiments to the crucible of cross-examination. Sandy has been wrongfully convicted of a crime she did not commit and the evidence did not show that she committed it beyond a reasonable doubt.

POINT OF ERROR NUMBER ONE RESTATED

The evidence is legally insufficient as a matter of law in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

ARGUMENT AND AUTHORITIES

A. An overview of the legal sufficiency of the evidence standard as explained by the Supreme Court in *Jackson v. Virginia,* and by the Court of Criminal Appeals in *Brooks v. State* and *Hooper v. State.*

In *Jackson v. Virginia,* 443 U.S. 307, 316-17, 99 S.Ct. 2781, 2788, 61 L.Ed. 2d 560 (1979), the Supreme Court held:

> The Winship[153] doctrine requires more than simply a trial ritual. A doctrine establishing so fundamental a substantive constitutional standard must also require that the factfinder will rationally apply that standard to the facts in evidence. A 'reasonable doubt,' at a minimum, is one based upon 'reason.' Yet a properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt, and the same may be said of a trial judge sitting as a jury.

In *Hooper v. State,* 214 S.W.3d 9, 13 (Tex. Crim. App. 2007), the Court of Criminal Appeals set forth the general legal sufficiency standard required by the Due Process Clause of the Fourteenth Amendment:

> In assessing the legal sufficiency of the evidence to support a criminal conviction, we consider all the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable

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[153] *In re Winship,* 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970). As the Court reasoned:

> The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence—that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.' *Coffin v. United States, supra*, 156 U.S.[432] 1895, at 453, 15 S.Ct., at 403. ... 'There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party has at stake an interest of transcending value—as a criminal defendant his liberty—this margin of error is reduced as to him by the process of placing on the other party the burden of persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt. Due process commands that no man shall lose his liberty unless the Government has borne the burden of convincing the factfinder of his guilt.'

> inferences[154] therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt. (Citations omitted). The reviewing court must give deference to 'the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences[155] from basic facts to ultimate facts.' *Jackson*, 443 U.S. at 318-19, 99 S.Ct. 2781. In reviewing the sufficiency of the evidence, we should look at 'events occurring before, during and after the commission of the offense and may rely on actions of the defendant which show an understanding and common design to do the prohibited act.' *Cordova v. State*, 698 S.W.2d 107, 111 (Tex. Crim. App.1985). Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction. *See Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App.1993) ... Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. (Citation omitted). On appeal, the same standard of review is used for both circumstantial and direct evidence cases. *Id*.

In conducting a legal sufficiency of the evidence review, there is, however, *no presumption* that a jury acted reasonably merely because the trial court properly

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[154]"[*Jackson v. Virginia*] of course does not mean that whenever the record supports conflicting inferences, no matter how weak, the prosecution wins, for not only would this be no more stringent than the standard of review in a civil case but also the prosecution would only fail in its proof where there was a total absence of probative evidence, which is the 'no evidence' standard rejected in Jackson. ***If Jackson's beyond a reasonable doubt standard is to have any meaning, we must assume that when the choice between guilt and innocence from 'historical' or undisputed facts reaches a certain degree of conjecture and speculation, then the defendant must be acquitted."*** *Cosby v. Jones*, 682 F.2d 1373, 1383 (11th Cir. 1982)(Emphasis added).

[155]As will be discussed *infra,* although juries are accorded deference to "draw *reasonable* inferences" from the evidence, this is not without limit. Juries are *not* permitted to make conclusions based on factually insufficient presumptions or inferences, or mere speculation. *Hooper v. State,* 214 S.W.3d 9, 16 (Tex. Crim. App. 2007).

instructed them; rather the evidence must be tested "to see if it is at least conclusive enough for a reasonable factfinder to believe based on the evidence" that all elements have been established beyond a reasonable doubt." *Jackson,* 443 U.S. at 318, 99 S.Ct. at 2788, 61 L.Ed.2d at 573; *Blankenship v. State,* 780 S.W.2d 198, 207 (Tex. Crim. App. 1988). "A reasonable doubt in homicide actions may arise from the ***absence of evidence*** as well as from the evidence itself. There must be legal and competent evidence of an affirmative character showing that a criminal homicide was committed ***and that the defendant was a guilty agent therein***." 18 Tex. Jur. 3d Criminal Law: Offenses Against the Person § 115 (Emphasis added.)*;* and *Mitchell v. State,* 650 S.W.2d 801 (Tex. Crim. App. 1983). And, of particular importance, *all* of the evidence admitted at trial is to be considered–that of the prosecution as well as that of the defense. *United States v. Giraldi,* 86 F.3d 1368, 1371 (5th Cir. 1996) ("In reviewing for sufficiency of the evidence, ***we consider the countervailing evidence*** as well as the evidence that supports the verdict.") (Emphasis added); *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010)*, supra,* at 899.

Proof that amounts to a strong suspicion of guilt or a probability of guilt falls short of the legally sufficient evidence mark. *Winfrey v. State,* 393 S.W.3d 763, 769 (Tex. Crim. App. 2013). Mere presence, as mentioned previously, or mere opportunity to commit the offense in question does not tend to establish proof of the commission

of the offense by the accused. *Wilson v. State,* 147 Tex. Crim. 653, 184 S.W.2d 141, 143 (1944), *superseded by statute* (*on other grounds*), *Blake v. State*, 971 S.W.2d 451 (Tex. Crim. App. 1998). Although motive[156] and an opportunity to commit murder can

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[156]In opening statement, the prosecutor stated to the jury: "[d]on't know that I have motive here, but there's no other way any other thing could have happened other than she just brutally murdered her husband." (RR 4 – 20). In final argument, "the depth of the religious issue" was touted as the motive with the insurance angle being relegated to the status of "a possible motive." (RR 13 – 158-159). The prosecutor called no one to testify about the life insurance policies with any personal knowledge; rather, Carrizal was asked questions concerning his investigation into whether there was insurance that benefitted Sandy if Jaime were to die. (RR 10 07-208). On cross-examination, Carrizal was asked if he was saying that Sandy killed her husband for the insurance money: "Is that what you're trying to tell the jury?" He responded, "**No**"; that he was trying to tell the jury that he did a thorough job investigating which included checking on insurance. (RR 10 – 209).

His "thorough" job was anything but; he did not know how long the insurance had been in place or how long it "sat there" without being changed in any way, although he at least conceded that might be important to know. (RR 10 – 209). He was unaware that HISD employees are afforded life insurance as part of their salary package. (RR 10 – 211). And, he acknowledged that he had no idea what the Melgar's financial situation was, whether they owed money, had outstanding bills, investments, or any money in the bank, because he did not look at their bank accounts or consult accountants. (RR 10 – 210). Dousay acknowledged that he was unaware of any investigation being conducted into the Melgar's finances. (RR 8 – 132). (No evidence was adduced as to whether Jaime had a will, and if so, who were the heirs, or if he died intestate.)

Crucially, Carrizal offered *no* testimony which demonstrated *knowledge* on the part of Sandy that she was even aware of the policy's existence, much less that she knew at the time of the murder that she was the beneficiary. As previously stated, Mr. Belk testified that part of a homicide investigation would include looking into life insurance policies but that it was important to consider how long they had been in effect, the amount of the policy, and to determine whether there had been any recent changes to the policy. (RR 11 – 76). He saw nothing in the age, type, or value of the policy that concerned him as a possible motive in the case. (RR 11 – 77, 163). Eric Devlin confirmed that there was nothing in his forensic examination of the computers and cell phones which indicated any curiosity about or inquiry by Sandy as to life insurance; moreover, he uncovered no evidence of any financial incentives in the data he reviewed. (Defense Ex. 41 at 65-66).

The fact that Jaime, as part of his HISD employment package, had life insurance which apparently benefitted Sandy is of no relevance or probative worth *because there was no evidence*

(continued...)

be considered circumstances indicative of guilt, they are not legally sufficient to prove identity. *Temple v. State,* 390 S.W.3d 341, 360 (Tex. Crim. App. 2013). While reviewing courts must accord due deference to the trier of fact's responsibility "to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts", as a matter of constitutional law that deference is *not* total as was made clear in *Brooks v. State, supra,* at 902: [157] [158]

(...continued)
adduced at trial which established that at the time of his murder Sandy was aware she was a beneficiary on the policy. As the Court recognized in *Winn v. State,* 937 S.W. 2d 124, 128 (Tex. App. [Amarillo] 1996), it has been the law since at least 1886, *see Phillips v. State,* 22 Tex. App. 139, 2 S.W. 601 (1886), that:

> evidence showing an accused's motive to murder is admissible only if accompanied by proof satisfactorily showing that, at the time of the murder, the accused had knowledge of the facts constituting the motive. *Id.* at 604. Absent the showing of the accused's knowledge, the evidence is not relevant and is inadmissible. *Id.* At 605. Stated other ways, the rule is that, manifestly, facts unknown to the accused cannot be proven to show motive for a killing. *Berwick v. State,* 116 Tex. Crim. 508, 31 S.W.2d 655, 656 (1930), and that proof of facts not directly or circumstantially shown to be known to the accused at the time of the homicide is not admissible against him to show motive on his part. *Edmondson v. State,* 109 Tex. Cr. R. 518, 6 S.W.2d 119, 120 (1928).

See also Eby v. State, 165 S.W.3d 723 (Tex. App. [San Antonio] 2005).

[157]"[O]ur duty as a reviewing court requires us to ensure that the evidence presented *actually* supports a conclusion that the defendant committed the crime charged." *Williams v. State,* 235 S.W.3d 742, 750 (Tex. Crim. App. 2007) (Emphasis added.)

[158]In *Brooks,* a plurality of the Court of Criminal Appeals jettisoned application of a "factual sufficiency of the evidence" review in criminal cases by overruling *Clewis v. State, supra.* (323 S.W.3d at 895.) As one commentator observed, in reliance on an earlier opinion by Judge Hervey
(continued...)

A dissenting opinion in *Lancon* (253 S.W.3d 699 (Tex. Crim. App. 2008)) stated that the majority opinion 'seems to say that from now on, the level of deference due a jury's decision will be total deference when the decision is based on an evaluation of credibility.' See *Lancon*, 253 S.W.3d at 708 (Johnson, J., dissenting). We disagree. Our decision in Lancon merely recognizes that the jury is the 'sole judge of a witness's credibility, and the weight to be given the testimony,' thus requiring the reviewing court to defer to the jury on these determinations (i.e., view the evidence in the light most favorable to the verdict). Viewing the evidence in the light most favorable to the verdict, however, ***begins*** *the* Jackson v. Virginia legal-sufficiency analysis. The *Jackson v. Virginia* standard **still requires** the reviewing court to determine whether *'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt*.' See *Jackson*, 443 U.S. at 319, 99 S.Ct. 2781 (emphasis in original); *Watson*, 204 S.W.3d [404] at 418 n. 7 [Tex. Crim. App. 2006] (Hervey, J., dissenting). This is the portion of the *Jackson v. Virginia* standard that essentially incorporates a factual-sufficiency review. See *Clewis v. State*, 876 S.W.2d 428, 438-39 (Tex.App.-Dallas 1994) (*Jackson v. Virginia* standard necessarily encompasses a factual-sufficiency review), *vacated*, 922 S.W.2d at 136.

(...continued)
(*Watson v. State*, *supra*) who authored the lead opinion in *Brooks,*

> [t]he *Jackson v. Virginia* standard has two components. It requires the reviewing court to view the evidence in the light most favorable to the verdict, which means that the reviewing court defers to the jury's credibility and weight determinations apparently because the jury, having seen the witnesses testify, is in the best position to make these calls. The *Jackson v. Virginia* standard then requires the reviewing court to determine whether the jury's verdict is 'rational' under the beyond a reasonable doubt standard. This 'rationality' component prevents an 'unjust' conviction and accomplishes essentially what *Clewis* seeks to accomplish.

Clueless over Clewis or: How I learned to Stop Worrying and Welcome Brooks v. State,, 23 App. Advoc. 246, 248-249 (2010).

"[T]he jury is free to believe or disbelieve evidence, but after a review of all of the evidence by the appellate court, it may become apparent that the jury's ultimate finding of guilt is not rational." *Temple v. State,* 342 S.W.3d 572, 632 (Tex. App.–Houston [14th Dist.] 2010) (Dissenting Opinion J. McCauley), citing, *Brooks, supra,* at 906-907.[159] In her concurring opinion in *Brooks,* Judge Cochran reasoned that,

> [l]egal sufficiency of the evidence is a test of adequacy, not mere quantity. Sufficient evidence is 'such evidence, in *character*, *weight*, or *amount*, as will legally justify the judicial or official action demanded.' In criminal cases, only that evidence which is sufficient in *character*, *weight*, and *amount* to justify a factfinder in concluding that every element of that offense has been proven beyond a reasonable doubt is adequate to support a conviction.[160]

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[159]"Significantly, however, we know from both *Jackson v. Virginia* and *Brooks* that there is some quantity or quality of evidence *that a rational jury cannot disregard or disbelieve."* (*Id.*) (Emphasis added.) As this Court has explained,

> [D]isregarding all contrary evidence, no matter how mountainous or compelling it may be, appears incongruous with the reviewing court's task of deciding whether a rational factfinder could have found a defendant guilty beyond a reasonable doubt given that it is the evidence contrary to the verdict that commonly injects the element of 'reasonable doubt' into the jury's deliberations.

Redwine v. State, 305 S.W.3d 360, 366 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd).

[160] As Judge Cochran explained, "...[T]he standard of proof *and review* in criminal cases has been expressed, not by the quantity of evidence produced or how it might be weighed neutrally, but rather by the *quality* of the evidence and the level of certainty it engenders in the factfinder's mind." *Id.* at 917-918 (Emphasis added.)

(continued...)

.....

> [l]egal sufficiency of the evidence ... may be divided into two zones: evidence of such sufficient *strength*, *character*, and *credibility* to engender certainty beyond a reasonable doubt in the reasonable factfinder's mind and evidence that lacks that strength. Appellate review of a jury's verdict of criminal conviction focuses solely on that 'either-or' character of evidentiary sufficiency because a defendant is entitled to an acquittal if the evidence lacks that strength.

(323 S.W.3d at 917-918.) [161]

(...continued)

See Beyond a Reasonable Doubt, 68 N.Y.U.L.R, 979, 981, 986 (1983), wherein Judge Newman reasons "that the rigor [of the beyond a reasonable doubt standard] has a significant bearing on the mistake rate of criminal trials" and argues that the heightened burden imposed by the standard requires "evidence of *greater persuasive force*, not necessarily of greater quality." (Emphasis added).

[161]Texas has long jettisoned any reliance on a "no evidence" standard of legal sufficiency review–"if there is any evidence which, if believed, shows the guilt of the accused", the conviction is affirmed. Utilization of this rubric flies squarely in the face of *Jackson v. Virginia* and results in a deprivation of due process. Again, as Judge Cochran reasoned:

> In *Jackson*, the Court explained that the *Thompson* (*vs. Louisville,* 362 U.S. 199, 199, 80 S.Ct. 624, 4 L.Ed.2d 654 (1960)) 'no evidence' review 'secures to an accused the most elemental of due process rights: freedom from a wholly arbitrary deprivation of liberty[,]' but that standard is inadequate for 'a question of *evidentiary* 'sufficiency.' 'Instead, the correct standard must incorporate the prosecution's burden of proof–beyond a reasonable doubt–in a due-process review. The Court noted that a 'reasonable doubt' has often been described as one 'based on reason which arises from the evidence or lack of evidence.'

(*Id.* at 916), citing, *Brooks v. State, supra*, at 916. (Emphasis added).

The Court of Criminal Appeals in *Brooks* characterized "a rigorous and proper application" of the *Jackson v. Virginia* legal sufficiency of the evidence standard "***as exacting a standard as any factual-sufficiency standard***." (*Id.* at 906.) (Emphasis added.) Moreover, it has rightly been described as a "highly individualized inquiry..." *Carrizales v. State,* 414 S.W.3d 737, 742 (Tex. Crim. App. 2013). If the "evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged," the evidence is legally insufficient. *Clark v. Procunier*, 755 F.2d 394, 396 (5th Cir. 1985) (quoting *Cosby v. Jones*, 682 F.2d 1373, 1383 (11th Cir. 1982)); *United States v. Fortenberry*, 919 F.2d 923, 926 (5th Cir. 1990). This is so because where an equal or nearly equal theory of guilt and a theory of innocence is supported by the evidence viewed in the light most favorable to the verdict, "a reasonable jury *must necessarily entertain* a reasonable doubt." *Clark v. Procunier, supra,* at 396. Although a Court does "not lightly overturn a jury's finding, **[it] must not hesitate to overturn a jury's verdict when it is necessary to 'guard against dilution of the principle that guilt is to be established by probative evidence beyond a reasonable doubt'**." *United States v. Jackson,* 700 F.2d 181, 183 (5th Cir. 1983), citing *Estelle v. Williams,* 425 U.S. 501, 503, 96 S.Ct. 1691, 1693, 48 L.Ed.2d 126, 130 (1976). (Emphasis added).

With respect to a jury's ability to draw reasonable inferences from the evidence, it is clear that due process requires that ***each*** inference must be "supported by the evidence presented at trial." *Hooper v. State, supra,* at 15. "[J]uries are not permitted to come to conclusions ***based on mere speculation or factually unsupported inferences or presumptions****."* (*Id.*) (Emphasis added.) As far as what the difference is between an "inference" and "speculation", the Court held:

> an inference is a conclusion reached by considering other facts and deducing a logical consequence from them. Speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented. ***A conclusion reached by speculation may not be completely unreasonable, but it is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt.***
>
> ***As stated above, juries are permitted to draw multiple reasonable inferences from the evidence (direct or circumstantial), but they are not permitted to draw conclusions based on speculation.***

(*Id.* at 16). (Emphasis added.) *Hooper* clarified that Courts are charged with determining "whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence (but not on any speculation) when viewed in the light most favorable to the verdict." (*Id.* at 16).

B. What the jury had to find beyond a reasonable doubt in the case *sub judice*

Murder, as proscribed by Section 19.02(b)(1) and (2), is a "result of conduct" offense–the culpable mental states relate to the *result* of the offense, i.e., **the causing**

of the death by the defendant alleged in the indictment. *Cavazos v. State,* 382 S.W.3d 377, 384 (Tex. Crim. App. 2012); *Cook v. State,* 884 S.W.2d 485, 490 (Tex. Crim. App. 1994). It was, therefore, strictly incumbent on the prosecution to prove beyond a reasonable doubt that Sandy Melgar was the person who actually caused the death of Jaime Melgar and that she acted with the requisite *mens rea* necessary to commit the offense. *See Johnson v. State,* 673 S.W.2d 190, 196 (Tex. Crim. App.1984), *overruled on other grounds*, *Geesa v. State,* 820 S.W.2d 154 (Tex. Crim. App. 1991). Evidence of events occurring before, during, and after the commission of the murder must be evaluated, as well as actions on the part of the defendant which establish–if they do–a "common design to do the prohibited act." *Cordova v. State, supra,* at 111.

C. The evidence adduced at trial falls far short of establishing Sandra Melgar's guilt beyond a reasonable doubt

The trial record shows the following:[162]

- There was no evidence adduced which established that Sandy caused Jaime's death; there was no physical evidence which, in any way, or to any degree, linked her to the murder or which established, or even tended to establish, her perpetration of it;[163]

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[162]The appellant specifically adopts by reference the statement of facts set out above.

[163]Absence of physical evidence connecting defendant to the crime scene, coupled with no testimony (continued...)

- There was no evidence which established that Sandy possessed the requisite *mens rea* to support a conviction for murder;
- There were no eye witness(es) to the murder;
- There were no inculpatory admissions by Sandy with respect to murdering her husband. Quite to the contrary, she voluntarily agreed to be questioned by the detectives and consistently and emphatically denied any involvement in his death;[164]
- Sandy voluntarily and repeatedly authorized the search of her residence, person, vehicles, computers, and cell phones by executing multiple written "consents";
- Sandy was found inside her home and there were no signs of forced entry. One of the garage doors, however, was found open by Herman Melgar and his family when they arrived for dinner on the afternoon of December 23, 2012.[165] The interior door in the garage leading into the residence was found unlocked. In fact, undisputed testimony showed the door lock did not work and the door could not be secured;

(...continued)
presented at trial implicating defendant in the murder, resulted in a finding of legally insufficient evidence. *Winfrey v. State,* 393 S.W.3d 763, 769 (Tex. Crim. App. 2013). Even "a strong **suspicion** of guilt does not equate with **legally sufficient evidence of guilt**." (*Id.*)

[164]Although it is true that the jury did not have to believe Sandy's exculpatory version of the facts, and was free to discredit them, it is equally true that such disbelief, if any, does ***not*** become "affirmative evidence tending to prove the contrary, or at least sufficient evidence of the contrary to meet the State's burden of proof." Tex. Prac. 43A, Dix and Schmolesky, § 51:40 at pg. 737. *See Gold v. State*, 736 S.W.2d 685, 689 (Tex. Crim. App. 1987) *disapproved of by Torres v. State*, 785 S.W.2d 824 (Tex. Crim. App. 1989), *on other grounds:*

> This Court has held that a factfinder may not find facts necessary to establishing an element of a criminal offense purely on the basis of its disbelief of the accused's contrary assertions. *Wright v. State*, 603 S.W.2d 838, 840 (Tex.Crim.App.1980) (Opinion on appellant's motion for rehearing). Rather, the State has the burden of going forward with evidence to show, and of persuading the factfinder beyond a reasonable doubt of every element of the offense.

[165]As demonstrated *supra,* the garage door was observed by neighbor Scott Lacy to be up at least as early as 7:15 a.m. on December 23, 2012.

- When Herman announced that he and the family had entered the house, Sandy cried out for help. By just hearing her voice, he knew that she was in distress. Sandy was found on the floor of the master bathroom closet. A chair had been wedged beneath the door knob on the exterior side of the closet door preventing the door from being opened from inside the closet. Herman was able to open the closet door by removing the chair; it took considerable effort for him to do so. Of particular importance, both Herman and Maria confirmed that the chair was tilted with its front two legs in the air and its back two legs resting on the *tile floor* and *not* on top of a sham or anything else. (A sham was later found on the bathroom floor but this was after first responders and family had been in and out of the bathroom);[166]

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[166]The prosecution *theorized* that it *could be possible* for a person inside the closet to manipulate the sham with the chair on the top of it, by pulling the sham underneath the door, and thereby wedging the back of the chair beneath the door knob. To conclude that actually occurred in the instant case is sheer speculation. As stated *supra,* Lt. McConnell, to his credit, confirmed that it was only a theory and that he was not saying the sham had actually been used in the way he speculated. He admitted he did *not* know how the chair was actually positioned prior to the arrival of law enforcement or what location or position the sham was in at that time. It was undisputed that Herman, Maria, and EMS techs had all been in the bathroom before the arrival of law enforcement. While law enforcement never contended that anyone had purposefully altered the scene, there is no question that the scene was not "pristine" by the time CSU investigators arrived.

McConnell also conceded that he had never spoken to the eye witnesses who had found the chair wedged beneath the door knob. He acknowledged that the only way his experiment could work was for at least one leg of the chair to be positioned on top of the sham at the time it was being pulled under the closet door.

There is no evidence which supports this theory. To the contrary, both Herman and Maria testified that the legs of the chair were *not* on the sham, but rather, the back two legs were actually touching the tile floor. When Herman opened the closet door, there was no sham inside the closet. "A conclusion reached by speculation may not be completely unreasonable, but it is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt." *Hooper v. State, supra,* at 16. "An inference is a conclusion reached by considering *other facts* and deducing a logical consequence from them, *while speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented.*" *Winfrey v. State,* 393 S.W.3d 763, 771 (Tex. Crim. App. 2013) (Emphasis added). "An inference is not reasonable when there are other competing reasonable inferences that could also be drawn from the facts presented." *Hooper v. State, supra,* at 16.

- When Herman and Maria found Sandy, she was tied up by a binding with her arms behind her back. The bindings were wrapped around her lower arms and extended to the wrists and were tied so tightly that they had to use a pair of scissors to cut the bindings off. Later, Maria used the scissors to cut the bindings from Sandra's ankles. This testimony is simply uncontradicted;[167]
- By all accounts, Sandy was in a state of shock when found. She was described as "distraught", "very upset", "frightened", "crying hysterically", and "screaming." She was repeatedly told to calm down by law enforcement and first responders in order for them to understand what she was saying.[168] This is confirmed by Herman, Maria, Stephanie Roberts, and even by Deputy Martinez who, later at trial, testified that Sandy cried but "without tears." Additionally, according to Roberts, Sandy had lost all concept of time;

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[167]The fact that apparently marks were not observed on Sandy's ankles is of no moment. She had put booties on in the closet after she got out of the Jacuzzi. It is reasonable to assume that impressions would have been difficult to see based on the fact that cloth material was used to secure her legs and ankles as opposed to rope, leather, wire, or something abrasive. As far as Sandy's wrists are concerned, she was tied with her arms behind her back with the bindings wrapped around her arms from the wrists to just below the elbow. Red marks left on her forearm photographed by Carpenter at the scene corresponded with where Maria Melgar saw the bindings before they were cut off. *See* Defense Exhibits 1958-1960. Both Herman and Maria were interviewed at the scene but law enforcement officers never spoke to them again. Nor did any agent of the district attorneys office. There was no evidence from any source to contradict their testimony regarding how Sandy's arms were positioned behind her back or where on her arms the bindings were tied.

[168]Compare to *Temple v. State, supra,* at 362:

> Testimony also showed that Appellant lacked emotion after discovering that his wife had been shot. At the scene, he did not appear to be upset, and he did not cry. Later, when interviewed, Appellant became irritated and aggressive. He would not look the detectives in the eyes, he would 'shake and bounce' in his chair, he was hesitant in his answers, and he still did not cry. Also, a few weeks after Belinda's funeral, Appellant was asked if he would like to find the murderer, to which he responded, '[W]hat difference is it going to make. It's not going to bring her back.'

- Shortly after Maria began to assist her, Sandy asked her repeatedly, "where is Jim?" Maria confirmed that Sandy was genuine and inconsolable.[169] Even Roberts, who thought there was something "fishy"[170] about the crime scene, was adamant that she was *not* saying that Sandy was "faking it;"
- Sandy complained that she must have had a seizure because of the way she felt when she woke up in the closet. She repeatedly complained that her head hurt and was observed rubbing the left side of her head. Although Roberts testified she did not feel a bump on Sandy's head, Tammy Armstrong did several hours later. An examination by Dr. Enrique Granda on December 27, 2012 documented the existence of a "lump in the right temporal-parietal region with superficial hematoma." Dr. Hershkowitz testified that hematomas can take hours to develop and that Sandy's head injury was consistent with a "coup contrecoup" injury;
- Sandy had urinated and defecated on herself while in the closet. Her soiled lavender panties were found on the floor of the master bedroom. She had been assisted in changing her clothes by Maria prior to the arrival of the first responders; when asked, she informed the detectives what the color of her panties were (lavender). Carpenter was aware of the feces in Sandy's soiled panties but made no mention of it in his offense report;
- Sandy informed EMT techs and law enforcement officers that she had preexisting medical issues, including lupus, seizure disorder, and bilateral hip replacements. The record amply demonstrates a documented history of these maladies and that in the months prior to Jaime's murder, she did not feel well, was suffering from fatigue, and had been experiencing auras which affected her short term memory;

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[169]Deputy Martinez testified that Sandy never asked about Jaime in her presence. However, she conceded on cross-examination that she was unaware that Sandra had *already* seen Jaime dead in the closet before her (Martinez's) arrival at the scene. Maria Melgar confirmed that Sandy was crying hysterically on the floor at Jaime's feet.

[170]This, too, is sheer speculation and cannot legally support any valid conclusion or inference. *Hooper v. State, supra,* at 16.

- Sandy told responders and law enforcement that she could not remember who tied her up and put her in the closet. After she calmed down (at the behest of Deputy Martinez), she informed them that she and Jaime had gone out to dinner the night before at Los Cucos, stopped at CVS to get mixers, and returned home.[171] They got into the hot tub (Jacuzzi) but she had little memory of events after that. During her interrogation, which took place several hours after she had been found tied up in the closet, she recalled that Jaime got out of the tub and wrapped a towel around himself to go take care of the barking[172] puppies but did not return. After a few minutes, she got out of the tub and into her closet to get dressed. She retrieved a robe, nightie, and lavender panties from within the closet and then sat on the chair normally kept in the closet to put on socks and apply lotion to her legs. She woke up later in the closet. Sandy was found wearing exactly what she said she had gone to the closet to put on. In addition, a tube of lotion was found on the closet floor between where the chair was normally positioned and the doorway to the closet. Indentations on the carpet inside the closet were plainly visible. Carpenter acknowledged these were consistent with chair leg impressions where a chair had previously been placed and that the indentions were consistent with the front of the chair being close to the doorway of the closet;
- Sandy repeatedly told Carrizal and Dousay in their interrogation of her that she did not remember Jaime closing the door to the garage after they arrived home from dinner and CVS and did not know if Jaime had, in fact, closed it because she went into the house first;

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[171]All of this is corroborated by CVS video recordings and/or receipts.

[172]As stated *supra,* Odile Robertson, the next door neighbor, testified that although she had been bothered in the past by the puppies barking, she did not hear them barking on the evening in question. She acknowledged on cross-examination, however, that she may well not have heard them barking because she and her husband were early risers and customarily went to bed at 9:00p.m.–long before Jaime got out of the Jacuzzi to check on the dogs. The evidence shows that a white bath towel was found underneath Jaime's body in his closet. ***Ms. Robertson also confirmed that Jaime had a bad habit of leaving the garage door open.***

- It is undisputed that investigators never bothered to interview Herman Melgar about whether the interior door to the garage was locked or not when he gained entry into the house through it on the afternoon of December 23, 2012. If anything, the record is uncontradicted that Dousay misstated what Marissa Melgar had told him concerning her knowledge as to whether the interior door was locked when her father entered the house through the garage. Dousay could not offer any explanation why he had mischaracterized the information he obtained from Marissa Melgar during her interview;
- No investigation was ever conducted into the unlocked garage interior door–a door that was shown to have a lock that either did not work or was broken. In fact, it is clear from this record that the investigators overlooked (or simply disregarded) **the very point of entry into the house that was unsecured;**
- Sandy accurately described what she and Jaime ate and drank at Los Cucos, what they drank upon returning home, where they had purchased liquor earlier in the day, what they wore to dinner, where they placed their clothes after taking them off to get into the Jacuzzi, and the lighting of candles–all of which is corroborated by the evidence;
- Sandy told Carrizal and Dousay that she recalled waking up in the closet but that she couldn't move and that her head hurt. She told them "it felt like a seizure." She went to sleep again and when she awoke, her head still hurt as did the muscles in her entire body. She could not rub her head because she couldn't move; she was tied up with her hands and arms behind her back and tied at the ankles. She told them repeatedly that it felt like she had been hit on the head, or that her head hit something, or that she had had a seizure. She also told them she had been having auras and that the auras told her she is going to have a seizure;
- Sandy informed Carrizal and Dousay, as she had the EMS technicians, that she had seizure issues and memory loss. (These topics came up literally a dozen times in the interrogation). However, virtually nothing was ever done to investigate or document these very relevant issues. Elizabeth Melgar on December 26, 2012 provided extensive information about her mother's medical condition but NO effort was made by either Carrizal or Dousay to follow up. Dr. Susie Nguyen's records weren't even obtained, much less reviewed, until *after* the return of the

indictment–*over eighteen months after Jaime's murder*. Those records, which were introduced at trial, document Sandy's history of seizure disorder and auras, contrary to representations made by the prosecutor at trial;

- Contrary to the prosecutor's slant at trial, evidence adduced by the defense established that property, in fact, was missing from the Melgar premises. A small television from the master bedroom (sans the homemade antenna next to it) had been taken, as well as jewelry, medication (including opiates), cash from the purse and wallets, a DVD player, a laptop, and a white Xbox. This list does *not* include the property found in the green and black backpack which included another Xbox, (taken from the empty space in the living room media center area), Xbox controllers, jewelry, and video games. **Carrizal conceded that he had been informed about the missing property although he chose not to document the same in his offense report;**[173]
- Carrizal and Dousay maintained that Sandy would have been able to hear Jaime being attacked. This theory does not take into account, however, the fact that she consistently maintained that the Jacuzzi was very loud and remained on after she got out. Even though investigators were aware of this, at no time did they turn on the Jacuzzi to determine how loud the motor and pumps ran. Moreover, it does not necessarily follow that Jaime was murdered while Sandy was even in the Jacuzzi. Consistent with the assistant medical examiner's testimony, at least some of his head injuries could well have been inflicted *prior* to the time he was stabbed to death in the closet and at a different location in the house. There is evidence in the record that Jaime got out of the Jacuzzi to check on the barking puppies–which is corroborated by the animal hair and dirt on his feet and the towel found underneath his body. Just why were the puppies barking? Were there strangers on the premises? He could easily have encountered home intruders in the backyard, garage, or elsewhere in the house, and been struck on the head or threatened into silence at

[173]Compare to *Temple v. State, supra,* at 362, wherein jewelry boxes and jewelry on top of the dressers appeared undisturbed, the defendant admitted that the "burglar didn't take one single thing that belonged to [him]"; and an insurance claim was filed for several pieces of missing jewelry which law enforcement officers were not aware of until observing a report of it on television.

that point. Sandy, at or about that time, could have been struck on the head as she sat on the closet chair, bending down to put lotion on her legs. Rendered unconscious, because of a blow to the head or a resulting seizure, she would not have heard anything. There was evidence from several sources that Sandy's head hurt and she had a lump or hematoma on her head;

- Deputy Martinez testified that the scene did not look like a typical *burglary* scene to her because property had not been taken. She, however, had never worked a capital murder scene and had no knowledge about what may well have been taken from the house.[174]

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[174]Rossi from Montgomery County was of the opinion that the crime scene *may* have been "staged". This is so even though she had never been to the crime scene. The way items appeared on top of the chest of drawers or in its drawers were dissimilar to other crime scenes she had seen where a *ransacking* had taken place. She conceded that not every home invasion looked the same, and had no knowledge whether anything had been stolen from the Melgar residence. Her opinion with respect to possible "staging" was based, in part, on the fact that there was no forced entry into the residence. She clearly was not aware of the unlocked interior door leading from the garage to the house. She relied on other investigators' reports and no one *documented the fact that the interior door lock did not work or may have been broken. No photographs of the locking mechanism were taken.*. When asked on cross-examination, Rossi could not provide any authority establishing that opinion testimony regarding the "staging" of a crime scene had been peer reviewed or otherwise validated.

While testimony that a crime scene was "staged" is admissible and can be considered, along with other evidence in a case, to determine whether evidence is legally sufficient to support a conviction, *Temple v. State,* supra, at 361, the facts in *Temple* are significantly different than the facts herein. In *Temple,* the broken glass from the door (supposedly caused by intruders) was found in a place inconsistent with the door being closed when the glass was broken. The defense's theory was that the glass broke by the force of the door hitting the back hutch next to the door. There was no damage, however, to the hutch or to the door which supported this theory. *Id.* at 361.

In reviewing legal sufficiency of the evidence, however, there is a hazard in placing too much reliance on "expert witness" law enforcement testimony as to whether an "observed set of circumstances constituted commission of a crime". As Judge Newman argued in his concurring opinion in *United States v. Young,* 745 F.2d 733, 766 (2d Cir. 1984):

The hazard of permitting the opinion in evidence ought to make courts cautious

(continued...)

- Despite seeing no signs of forced entry, Dousay admitted on cross-examination that he could not exclude the possibility of an unknown perpetrator having entered the house. Deputy Rossi conceded that the absence of trace evidence in the house did *not* preclude the possibility that an unknown intruder murdered Jaime Melgar and then left the premises without leaving any trace evidence behind (or investigators finding trace evidence). She conceded on cross-examination that she was *not* saying there was only one intruder and that there could have been more than one. Obviously, if the killer or killers were wearing gloves, their DNA would not necessarily have been left at the scene;
- Shredded paper found at the scene and the contents of a vacuum cleaner were "dead ends" and explained by the nature of the family home business–medical billing–and the non-disclosure requirements of HIPPA. No effort was even made to analyze the shredded paper forensically;
- A mop and bucket of water found in the dining room "for the world to see" proved to be of no significance. No analysis was conducted on the bucket's contents or on the bucket or mop itself. (The mop and bucket were used to clean up puppy urine and poop.) Deputy Martinez testified that she smelled the odor of Clorox that she associated with the mop and bucket but did *not* smell Clorox *anywhere else* in the house. Carpenter agreed that he would expect bleach to be in a bucket with a mop to clean up dog urine and feces (and there were "pee" pads in the house.) Deputy Rossi testified that there was no evidence that the mop and bucket had been used to eradicate evidence. Carpenter testified that "[t]hrough the investigation, we didn't think it was relevant to collect the mop at that time";

(...continued)
in assessing the sufficiency of a case based heavily on such an opinion. If the observed actions of a defendant do not establish a prima facie case, I do not believe that an expert's opinion that his actions are criminal may carry the prosecution's proof above the requisite line. ***It is one thing to permit a jury to weigh that opinion in considering an otherwise adequate case; it is quite another matter to let that opinion salvage an insufficient case***.

(Emphasis added).

- There were no useable latent fingerprints lifted by Carpenter and no effort even to look for possible latent prints on the exterior side of the interior door in the garage;
- There was ***no*** evidence of ***any*** effort to clean up the crime scene as demonstrated by the results of reagents applied by Carpenter. If there had been, smear or wipe patterns on surfaces would have been visible;[175]
- *None* of Jaime Melgar's DNA was found on any sink, tub, or shower stall in the house;[176]
- The DNA analysis of swabs from the south sink and Jacuzzi in the master bathroom *excluded* Jaime as the source; no conclusion could be reached as to the swabs of the north sink. The "positive" reactions to the application of Fluorescein to the bathroom sinks and the rim of the Jacuzzi did not establish the presence of blood, however, because no confirmatory testing was done. This conclusively establishes that the prosecution adduced **no evidence** of the presence of Jaime's blood anywhere in the bathroom except on the knife itself. This is especially significant in light of the fact that the uncontradicted evidence at trial established that the murderer(s) would have gotten Jaime's blood on their bodies and clothes due to the murder weapon used, the type and sheer number of sharp, forced injuries, and the arterial spraying of blood that occurred;[177]
- The swabs of the south sink and Jacuzzi were consistent with Sandy's DNA but that analysis did *not* establish that the substance containing her DNA was, in fact, *blood*. Carpenter conceded that there was no necessary linkage between a "positive" reaction to a reagent and to the commission of a crime since fluids can remain on a sink for a lengthy

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[175]It is submitted this evidence is "conclusive". As the Court of Criminal Appeals has held, "[s]uch evidence 'becomes conclusive (and thus cannot be disregarded) when it concerns physical facts that cannot be denied.' " *Evans v. State,* 202 S.W.3d 158, 163 n. 16 (Tex. Crim. App. 2006).

[176]These, too, are "conclusive facts." *(Id.*)

[177]*Id*.

period of time after deposited. Additionally, one would expect that a homeowner's fluids and DNA would be found in their own bathroom;[178]

- The reagents did not cause any reaction to the shower stall when applied;[179]
- No bloody clothing was found anywhere in the house, including the garbage cans. Moreover, Sandy was not shown to be wearing any clothing items with blood or other bodily fluids on them;
- No bloody gloves or trace evidence associated with the removal of bloody gloves or clothes were found anywhere on the premises. Deputy Rossi confirmed that gloves could be removed from the hands and turned into each other to prevent the cast off of blood. The offender could then put them in his pocket and just walk out of the house. She conceded, however, that this might take some level of sophistication not shown to exist with respect to Sandy;
- A visual examination of the tub of the washing machine, as well as clothes in a laundry hamper, did not discern the presence of blood;
- No evidence established the presence of any blood, DNA, or other evidence in either one of the Melgar's vehicles which would likely have occurred if Sandy had left the premises to "clean up." Moreover, as Dousay testified based on the HCSO investigation, no credible evidence was received that Sandy ever left the house after returning from dinner;
- Nothing of an evidentiary significance was obtained from anywhere outside the house;
- No blood or bloody clothing was found in the master bathroom closet where Sandy was found tied up;

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[178] *Id.*

[179] *Id.*

- None of Sandy's DNA was shown to be mixed in Jaime Melgar's blood;[180]
- None of Jaime's DNA was found on Sandy's person, her clothes, or where she was found tied up in the master bathroom closet;[181]
- None of Sandy's DNA was shown to be on the murder weapon;[182]
- None of Jaime Melgar's DNA was found under Sandy's fingernails (or on her hands); and as stated above, none of Sandy's DNA was found underneath Jaime's fingernails;[183]
- *Third–party* DNA was found in the house on several items swabbed by CSU investigators: (multicolored scarf, jewelry boxes located in the master bathroom drawer pulls on the dresser in the master bedroom, and on some door knobs in the house). Third–party DNA was also found on a piece of jewelry in the green and black backpack found in the garage, consistent with the presence of an intruder (or intruders). The DNA sample was insufficient to determine if Elizabeth Melgar or any other female was the source of the DNA of "Unknown Female No. 1". However, it was undisputed that the DNA of "Unknown Female No. 1 found on the piece of jewelry in the backpack was identical to the DNA obtained from swabs of the jewelry box in the master bathroom. Clearly, that person was not Sandy Melgar or any of the Melgars who provided buccal swab samples of their DNA;[184]

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[180]*Evans v. State, supra.*

[181]*Id.*

[182]*Id.*

[183]*Id.*

[184]*Id.*

- A presumptive test for blood was positive on the Gears of War game case which was located in the green and black backpack;[185]
- Sandy had a bruise on the inside of her left upper bicep. No effort was made, however, to swab the same for the presence of possible touch DNA although Carpenter conceded that, forensically, it was possible to do so. Mr. Belk testified that such a bruise was consistent with Sandy being grabbed from behind while being tied up and no evidence was adduced by the prosecution that the bruising was purportedly caused by Jaime grabbing Sandy (nor was any argument advanced by the prosecutor in support of such a theory);
- There were no injuries to Sandy's hands and certainly none consistent with inflicting over fifty (50) sharp force and blunt force injuries. The type and number of injuries Jaime sustained were consistent with autopsies Dr. Pinneri had performed on victims who had been beaten. She characterized the attack as being particularly violent. Some of Jaime's injuries to his face and torso were consistent with him being hit with a fist but, again, Sandy had no injuries consistent with that. A small scratch to the *outside* of her left thumb was not shown to have any relevance, nor was it even dated. Tellingly, neither Dr. Pinneri nor Deputy Rossi were asked any questions about it. Nothing remarkable was observed with respect to Sandy's hands except for the ***absence* of injuries**. There were no cuts to the palmer side of her hands consistent with holding and repeatedly using a bloody knife. There was no bruising, including to her right index finger (which would have contacted the hilt of the knife had Sandy repeatedly inflicted thirty - one (31) sharp force injuries);
- Sandy had no broken fingernails. *Every one* of them was intact without any chipping, an amazing feat for someone alleged to have committed such a savage and brutal murder by inflicting over fifty (50) sharp force and blunt force injuries, including two (2) skull fractures. Moreover, Jaime sustained "defensive" wounds to his hands, indicating that he put up a fight and attempted to ward off his assailant(s). The prosecutor's "last piece of evidence which proves she's the one" (saved for her finale

[185] *Id.*

in final argument) was that one of Sandy's nails looked "cloudy". She speculated this could have been caused by Sandy's use of a cleaning product as she attempted to wash blood from her nails and/or hand. This was not founded upon *any* evidence but was based on pure supposition and conjecture. While a jury is allowed to draw reasonable inferences, it cannot speculate or theorize about the possible meaning of evidence. *Hooper v. State, supra,* at 15. If anything, evidence in the record *refutes* this specious assertion. Swabbing of Sandy's right hand established that a presumptive test for blood was *negative.* Fingernail scrapings obtained by law enforcement from both of Sandra's hands showed that *none* of Jaime Melgar's DNA was found. Additionally, evidence established that cloudiness or mottling of the fingernails is *consistent* with *Raynauds's Phenomenon*–a condition that Sandy had been diagnosed with years before and that Dr. Granda observed on December 27, 2012. "An inference is not reasonable when there are other competing reasonable inferences that could also be drawn from the facts presented." *Hooper v. State, supra,* at 16;

- Based on the wound patterns on the body, Jaime Melgar would have struggled with his attacker(s) which could have resulted in injuries to him/them. Yet Sandy did not exhibit injuries to her extremities and torso. Dr. Pinneri could not rule out that more than one weapon was used due to the different appearances of the wounds on the head as compared to the torso. In addition, due to the appearance of the wounds, it was possible that a weapon with a *serrated* edge might have been utilized in addition to the knife retrieved from the Jacuzzi. Inexplicably, *no* testing or forensic examination of the knife found in the Jacuzzi was ever undertaken;
- Although the skull fracture could have been caused by Jaime falling and striking his head on the shelf bracket at the back of the closet, there was additional blunt force trauma to his skull. Dr. Pinneri could not rule out more than one murderer. She also agreed that not all of the injuries had to be inflicted at the same time; Jaime could have been hit on the head several minutes before he was stabbed and possibly in a different location in the house;[186]

(continued...)

- Red marks or contusions on Sandra's lower arms just above her wrists were shown to be consistent with her being bound with her forearms (not simply her wrists) behind her back—precisely in the manner she was found by Herman and Maria Melgar, when they heard her yelling for help from within the closet. Maria confirmed that the red marks clearly visible on Sandy's forearms were caused by the bindings that were cut off of her. No evidence was adduced by the prosecutor from any witness, let alone Dr. Pinneri, that the red marks were inconsistent with having been bound in the way described by Herman and Maria Melgar;
- The knots on the ligatures were never analyzed and no evidence was adduced that they were even similar to the knots on the red rope around Jaime's body;
- No evidence was introduced which showed that Sandy had any familiarity with, or any experience in, the use of a knife to kill or inflict injury.[187] To the contrary, testimony established that she was afflicted with *Raynauds's Phenomenon* and had circulatory problems with her hands that caused stiffness and made holding objects difficult–"she couldn't–she dropped things a lot. She couldn't hold onto things." (RR 12 – 46);
- The prosecutor's specious argument–that Sandy lured Jaime into the chair next to the bed and, while giving him a massage, pulled the knife out from under "something" and then slashed his chest and neck and that this caused him to jump out of the chair, whereupon she cut him on the right hand between his thumb and forefinger–was total conjecture and inconsistent with her own expert's testimony that blood on the chair and bed was arterial spray from the closet threshold.[188] Again, it is

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(...continued)

[186]The prosecutor's hypothetical concerning Sandra's purported use of sex toys and cutting Jaime's throat and torso from behind as he sat on the chair by their bed was not shown to be based on any forensic evidence or testimony. This was simply pure speculation. *Hooper v. State, supra,* at 16.

[187]Compare to *Temple v. State, supra,* at 362, wherein the evidence showed the defendant's familiarity with the use of shotguns which was the murder weapon used to kill his wife.

(continued...)

constitutionally impermissible for a jury to speculate or theorize about the possible meaning of evidence based on factually unsupported inferences. *Hooper v. State, supra,* at 15-16. Not only was it not supported by the evidence, it was *contrary* to it. Moreover, the prosecutor's statement that the cut to Jaime's thumb and forefinger were the "first cut" according to Deputy Rossi's testimony, was a flagrant misrepresentation of the record and not supported by the evidence; it was sheer conjecture and speculation. *Hooper v. State, supra,* at 16. Additionally, the argument that it had to be Sandy who stabbed Jaime because the wounds only penetrated his body at most 3 inches, whereas a wound inflicted by a male would have gone far deeper into his body, was supported by *no evidence whatsoever*; [189]

- The relationship between Sandy and Jaime Melgar was uniformly demonstrated to be a wonderful, loving, and caring one. There was utterly no animosity between them.[190] Contrary to aspersions cast on

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[188] "A prosecutor may not use final argument to invite the jury to speculate about matters that are outside of or unsupported by the record." *Baines v. State,* 401 S.W.3d 104, 107 (Tex. App.–Houston [14th] 2011; and *Borjan v. State,* 787 S.W.2d 53, 57 (Tex. Crim. App. 1990).

[189]Not only was the statement outside the record and unsupported by it, *Barnes v. State, supra,* its entire thesis is forensically incorrect:

> The force needed for a knife to perforate the skin depends on the configuration and sharpness of the tip of the knife. The sharper, more needle–like the tip, the more readily it will perforate the skin. *Once the tip has perforated the skin, the rest of the blade will slide into the body with ease. As long as it does not contact bone, a knife can readily pass through organs with very little force.* ***Thus, even if a knife blade is driven its complete length into the body, this does not necessarily mean that the stab wound was inflicted with great force.***

Forensic Pathology, 2nd Ed., Vincent J. DiMaio & Dominick DiMaio 2001, p. 187 (Emphasis added). The jury was not permitted to come to any adverse conclusion against Sandy in this regard because the prosecutor's argument was based on mere speculation or factually unsupported inferences. *Hooper v. State,* at 16.

(continued...)

Jaime by Carrizal and Dousay, he was not an abusive person and, by every account, was the "salt of the earth." No calls for service due to domestic violence or other issues had ever been made to their residence and neither of the Melgars had any kind of criminal record. Carrizal and Dousay did *no* follow–up investigation concerning the Melgar's relationship despite making proclamations to the contrary that they would. The record shows they were provided a list of contacts with names and phone numbers but never bothered to follow up. The same is true as to Sandy's character. She was shown to be a peaceable, non-violent, non-aggressive, even-keeled, and "mellow" person without a bad temper who was completely devoted to her husband;

- No "girlfriends", "boyfriends", or acts of infidelity were shown to exist despite the fact that the cell phones and computers of both Sandy and Jaime Melgar were swept by law enforcement and a defense forensic computer expert.[191] There was no showing that Sandy had any interest or curiosity about life insurance, let alone knowledge on her part that she was a beneficiary. There was nothing to suggest there was any kind of stress in their financial dealings or marriage;
- The prosecutor's "theory" espoused in final argument–that Sandy had a motive to kill Jaime because if she tried to divorce him she would be

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[190] There is not even any circumstantial evidence of animosity or serious disagreement between the Melgars. By every account, their relationship epitomizes the antithesis of animosity or disagreement. Obviously, there was no evidence of any threats made by Sandy against Jaime, let alone any interest by her in his death. *See Harris v. State,* 727 S.W.3d 537, 542 (Tex. Crim. App. 1987).

[191] *See Guevara v. State,* 152 S.W.3d 45, 50 (Tex. Crim. App. 2004) wherein the evidence "demonstrated that the appellant had a motive to kill his wife." The appellant, charged as a party, was involved in a long standing affair with a woman (Salinas) who wanted to marry him and ultimately killed his wife after giving him an ultimatum "that they would separate 'if something didn't happen by June.' " That "something" was the shooting of the wife by Salinas. (*Id.*) In *Temple v. State, supra,* the Court found that evidence of a poor relationship between the defendant and his deceased wife coupled with evidence of an ongoing affair at the time of the murder (which resulted in his marriage to the girlfriend after the murder), and evidence that the defendant told a witness, who had testified before the grand jury and spoken to the police, "you need to keep your mouth shut", were factors supporting a finding of legally sufficient evidence. At 353-355). The Court held that motive and opportunity are indicative of guilt but are not sufficient to prove identity. (*Id.* at 360).

ostracized by members of the Jehovah's Witnesses faith– is devoid of any evidentiary support and contrary to the evidence. **There was utterly no evidence from any source that anything was wrong with Sandy and Jaime's marriage. To the contrary, it was uncontradicted that they had a loving, loyal, and close relationship.** Nor was there any indication that Sandy wanted to "hang around" with other individuals outside the church. She simply was not "stuck" as the prosecutor hypothesized. In addition, the prosecutor misstated the evidence when she argued, "one of the witnesses testified that they believe Jaime is asleep." When asked if Jehovah's Witnesses believe that the dead are in a state of unconsciousness, Ms. Reib replied, that they "*can"* believe that", not that all Jehovah's Witnesses do believe that. (RR 12 – 19). This purported "motive" was simply a superficial "cover" for the prosecutor's true ulterior intent: to malign the religious belief of Jehovah's Witnesses, including Sandy and her friends, in the eyes of the jury. The jury argument, just like the jury's verdict, is predicated "on mere speculation or on factually unsupported inferences" *Hooper v. State, supra*. And, for jury arguments to be proper, they must have support in the actual evidence adduced at trial. *Lagrone v. State*, 942 S.W.2d 602, 619 (Tex. Crim. App. 1997).

- Dr. Hershkowitz had treated Sandra's seizure disorder for many years although he had not seen her for several years prior to her last visit to his office in 2013. He was also well aware that she had lupus, rheumatoid arthritis, joint pain, and had undergone bilateral hip replacements. Her seizure disorder had been documented based on an encephalogram he had personally conducted. He confirmed that after a seizure a person's muscles will ache and they will sleep, often for an extended period of time and that Sandy typically responded to seizures in this way. It is common for a person not to have a memory of having a seizure and then, over time, have bits of the memory return. Sandy had a history of experiencing "auras"–mini-seizures that may signal an upcoming full blown seizure which may or may not ultimately occur. Sandy, in particular, had a documented history of experiencing auras which typically did not progress past that point. Based on the medical records in the case, including those of Dr. Granda, his professional history with her, and evidence admitted at trial, he believed that Sandy may have experienced a seizure while in the closet. He thought it more likely,

however, that she was struck on the head or her head struck an object. She could have believed she had a seizure based on the way she felt when she awoke and her prior experience in having seizures. He was also of the opinion that her inability to recall all of the circumstances leading up to the traumatic event (receiving a concussion), or the traumatic event itself, was not at all unusual. Experiencing a memory loss and then having bits of the memory return over time was not uncommon.[192] Moreover, it is not unusual for a person to complain about pain coming from one side of the head to find a hematoma on the other side. He described this as a classic coup contrecoup injury;

- Mr. Belk, an esteemed former HPD Homicide Detective, reviewed the case file, including the State's discovery, visited the crime scene, inspected the State's evidence, and performed some investigation himself. He testified he had never seen a more poorly investigated homicide in his entire career–which included over 500 homicide investigations that he personally conducted while serving the City of Houston. The investigators in this case focused solely on Sandy and put virtually no effort into looking at the possibility that another suspect or suspects committed the instant murder. He found nothing that could fairly or logically be considered a motive in the case. He did not believe that the scene had been "staged"; in fact, he had seen many home invasion crime scenes without ransacked premises. He saw no injuries on Sandy consistent with her brutally attacking her husband. The condition of her hands and fingernails (lack of injury), the absence of DNA linking her to the crime, the absence of any attempt to clean up the crime scene, the fact that (with the exception of the knife in the Jacuzzi) none of Jaime's blood was found anywhere outside the bedroom closet or in the immediate vicinity of the chair and bench, the absence of bloody clothing or gloves, the lack of evidence demonstrating the transfer of blood as bloody gloves or clothes were removed, the failure to adequately interview family and friends to learn more about the couple's

[192] As the record reflects, Elizabeth Melgar was asked by the detectives to follow up with them if her mother's memory returned. And, in fact, bits of Sandy's memory did return. This information was provided to Carrizal in February 2013 and is documented in his offense report. However, he never followed up or did anything with it.

relationship, the failure or refusal to conduct an adequate canvassing of the neighborhood, the failure to process the bloody handle on the safe for DNA and fingerprints, and the abject disinterest investigators had as to Sandy's documented health issues, demonstrated an indifference by law enforcement that undermined not only their neutrality, objectiveness, and fairness, but the integrity of the entire investigation.

- There was no evidence of any attempt by Sandy to conceal evidence or to threaten or tamper with any witnesses during the investigation. *See Temple v. State, supra*.

After considering the entirety of the evidence adduced at trial–both from the prosecution and defense–it is respectfully submitted that no more than proof of suspicious circumstances has been demonstrated. Sandy was present at the residence but was in no way connected to the actual crime scene itself. No physical evidence, including DNA or other forensic evidence, connects Sandy to Jaime's brutal murder, much less proved or even tended to prove, the commission of the offense of murder by her. *Id.* At 768-769. Quite to the contrary, the physical evidence including lack of injury to Sandy's hands and nails, her documented medical problems, and absence of any blood on her person, clothing, or in the master bathroom or closet, strongly suggests that Sandy had no involvement in Jaime's murder. If she had in fact murdered Jaime, based on the sheer number and type of sharp force injuries he sustained and the uncontradicted testimony of both prosecution and defense witnesses, she would have been bloody. Yet there is no evidence of any effort to clean herself

or her clothing, nor any evidence consistent with the removal of bloody clothing or gloves. Moreover, the evidence established that no effort had been made to "clean" or eradicate the crime scene of evidence prior to the arrival of investigators.

Despite law enforcement's insufficient and incomplete DNA testing at the crime scene, there is evidence of the presence of third parties at the Melgar residence. And, notwithstanding the mantra of both law enforcement and the prosecutor of no "forced entry"(repeated *ad nauseam* throughout the trial), that theory is skewered by the inescapable fact that the right garage door was found to be open and the interior door leading into the house was unsecured. Prosecution witnesses conceded that the evidence did *not* preclude the existence of home invasion in this case.

Sandy and Jaime enjoyed a loving relationship and a very successful marriage and there is nothing in the record to dispute it. The evidence did not show any motive or animosity on Sandy's part to kill her life partner. There was nothing in the testimony concerning the faith or belief of Jehovah's Witnesses that, in any way, demonstrated a "reason" for Sandy to kill Jaime, although it did serve to disparage and denigrate those adherents. In looking a the "events occurring before, during, and after the commission of the crime" and considering "actions of the defendant which show an understanding and common design to do the prohibited act", *Cordova v. State, supra,* at 111, there is nothing which inculpates Sandy in Jaime's murder.

The deference that is rightly due a jury's verdict is not absolute. *Brooks v. State, supra.* A fair, objective, neutral, and diligent review of the trial record, and even viewing the evidence in the light most favorable to the verdict and according "deference to the responsibility of the jury to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts", leads ineluctably to the conclusion that a rational jury could not have found the essential elements of the crime beyond a reasonable doubt. A rational jury could not disregard or disbelieve the quantity and quality of the evidence that was admitted at trial through cross-examination of the prosecution's witnesses and in the defense's case-in-chief which raised a reasonable doubt as to Sandy's guilt.

Simply put, the evidence before the jury and now before this Court was *not* "of such sufficient strength, character, and credibility to engender certainty beyond a reasonable doubt in the reasonable factfinder's mind..." *Brooks, supra,* at 917-918. It was "more speculative than inferential as to [Sandy's] guilt." *Winfrey v. State, supra,* at 771. If *Jackson v. Virginia's* legal sufficiency of the evidence means anything and is, in fact, "rigorous" and an "exacting standard", the verdict herein is a clear injustice that cannot be permitted to stand. This jury, in the final analysis, reached "conclusions based on mere speculation or on factually unsupported

inferences." *Hooper v. State, supra,* at 16. This Honorable Court is a safeguard[193] and "must not hesitate to overturn [the instant] verdict when it is necessary to 'guard against dilution of the principle that guilt is to be established by probative evidence beyond a reasonable doubt." *United States v. Jackson, supra.*

POINT OF ERROR NUMBER TWO RESTATED

> The jury engaged in misconduct and received other evidence after retiring to deliberate thereby denying the defendant a fair and impartial trial.

ARGUMENT AND AUTHORITIES

At the Motion for New Trial hearing, evidence established that defense counsel and the prosecutor met with the jury after the verdicts were returned. There, the prosecutor asked the jury "what did you think of the demonstration?", referring to the prosecutor's in-court demonstration which occurred on Friday, August 18, 2017, during the cross-examination of Billy Belk. Before the jury, the prosecutor had tied her own ankles and then her wrists in an effort to demonstrate that it was possible for

[193] Although Courts are to give proper deference to the factfinder's role, they are to safeguard against "the rare occurrence when a factfinder does not act rationally." *Laster v. State,* 275 S.W.3d 512, 517-18 (Tex. Crim. App. 2009).

a person to tie themselves up.[194] The affidavit of Allison Secrest, admitted as evidence in the Motion for New Trial hearing (RR 16 – 6), established the following:

> When the prosecutor asked the jurors what they thought of the demonstrations, John Votaw, stated that many of the jury members had tied themselves up to see if it was possible to get loose from the bindings. He stated that they had done a demonstration and that on the first day of deliberations, Mary Boone was rolling around, tied up, on the floor, and that she tried to get herself out of the ties and that they wanted to see how much you could see while rolling around and for how long. Mary Boone sounded concerned about the deliberating process, stating how hard it was, that she did not want to be a juror, and that only God knows who is guilty and what happened.

As the record reflects, there were few factual issues more contested than the circumstances surrounding Herman and Maria Melgar finding Sandy tied up in her bathroom closet. Herman Melgar, Maria Melgar, Deputy "Cele" Rossi, Billy Belk, and Eric Devlin were all questioned concerning the matter although only Herman and Maria Melgar had actual personal knowledge of the same. *See for example:* (RR 9 – 126-127, 163-164, 204-205; 13 – 107; 14 – 175, 177-178). Although the prosecutor tied herself up as a demonstration at trial, that portrayal was fatally flawed because

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[194]As has been demonstrated, supra, the prosecutor's in-court demonstration of tying herself up was defused through confrontation. Defense counsel observed the prosecutor's "recreation" which was starkly different than the way witnesses described in their testimony as to how Sandra had been tied up when she was found on the floor inside of the closet. Defense counsel was able to contemporaneously point out for the jury (and the record) during re-direct examination of Mr. Belk the significant discrepancies between the prosecution's recreation and the manner in which Sandy was actually found to be tied up when she was rescued from the closet.

it did not accurately replicate or depict how Herman and Maria testified they found Sandy tied up. (RR 14 – 177-178). In final argument, the topic was discussed by both sides. (RR 13 – 146, 165). The trial court sustained defense counsel's objection refusing to allow the cord and scarf used by the prosecutor in her demonstration to be admitted into evidence and taken into the jury room during deliberations. (RR 13 – 115).

The jurors committed misconduct when they reenacted Sandy's incapacitation by tying themselves up, presumably at home (away from other jury members and deliberations), and then later during deliberations, using unknown objects/ties/scarves, not admitted in evidence. Sandy was denied the ability to cross-examine these jurors (1) to determine whether they had tied themselves up in the same manner described by Herman and Maria Melgar–tightly behind her back, on the arms above the wrist and below the elbow, and (2) to determine whether the bindings that were used in their experiments and demonstrations were remotely similar to those used to tie Sandy.

In *McQuarrie v. State*, 380 S.W.3d 145 (Tex Crim. App. 2012), the Court of Criminal Appeals held the trial court abused its discretion in *excluding*, pursuant to Tex. R. Evid. 606(b),[195] jurors' testimony and affidavits offered by Appellant, that a

[195] Texas Rule of Evidence 606(b) prohibits a juror from testifying about "any matter or statement (continued...)

jury member had conducted internet research into "date rape drugs and shared this with the other jurors" because this research constituted an "outside influence." The Court recognized the need to limit the jury to the evidence adduced at trial so as not to violate the defendant's right to confrontation. In this case, several jurors experimenting with scarves/ties not admitted in evidence violated Sandra Melgar's Sixth Amendment right to confrontation. "[T]he conduct of the jurors ... may be of such a character as not only to defeat the rights of litigants but it may directly affect the administration of public justice." *McDonald* (*v. Pless*), 238 U.S. at 266, 35 S.Ct. 783. Jurors should not conduct demonstrations or experiments in the jury room with physical items that are not part of the evidence admitted into the record *McLane v. State*, 379 S.W.2d 339, 342 (Tex. Crim. App. 1964) and *Carter v. State*, 753 S.W.2d 432, 435 (Tex. App.–Corpus Christi 1988).

There are legitimate reasons to prohibit unfettered investigation and experimentation by the jury in order to maintain confidence in judgments. "A juror must ... use the law, the evidence, and the trial court's mandates as his ultimate guides in arriving at decisions as to guilt or innocence and as to punishment." *Granados v.*

(...continued)
occurring during the jury's deliberations," with two exceptions. Tex. R. Evid. 606(b). A juror may testify about "whether any outside influence was improperly brought to bear upon any juror" or "to rebut a claim that the juror was not qualified to serve." Id.

State, 85 S.W.3d 217, 235 (Tex. Crim. App. 2002); see *Ocon v. State*, 284 S.W.3d 880, 884 (Tex.Crim. App. 2009). Such restrictions prevent a juror from acting as a witness against the defendant. The Sixth Amendment right to trial by jury, enforceable against the states pursuant to the Fourteenth Amendment's due process clause, "implies at the very least that the 'evidence developed' against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel." *Pyles v. Johnson*, 136 F.3d 986, 992 (5th Cir.1998) (citations omitted) (quoting *Turner v. Louisiana*, 379 U.S. 466, 472-73, 85 S.Ct. 546, 13 L.Ed.2d 424 (1965)). Similarly, limiting jury investigation is consistent with case law that limits a court's consideration of evidence to that in the record. For example, the State must prove each element of an offense beyond a reasonable doubt, and the evidence supporting the sufficiency of the evidence must be contained in the record. *Jackson v. Virginia*, *supra*; *Brooks v. State*, *supra*.

In *Pena-Rodriguez v. Colorado,* 137 S.Ct. 855, 861 (2017), the Supreme Court dealt with the lawful propriety of piercing the otherwise private sanctum of jury deliberations in order to expose racial bias expressed by a juror against the accused and his witness. In discussing the contours of jury "verdict finality" and the "no-impeachment rule", the Court recognized that as a general rule, once a verdict is

returned, "it will not later be called into question *based on the comments or conclusions they expressed during deliberations*." (Emphasis added). And in *McQuarrie v. State,* 380 S.W.2d 145, 151 (Tex. Crim. App. 2012), the Court of Criminal Appeals interpreted Rule 606(b) as precluding "a juror from testifying that the jury discussed improper matters *during deliberations.*" (Emphasis in original).

It is recognized that a Rule 606(b) inquiry is currently "limited to that which occurs both outside of the jury room and outside of the jurors' personal knowledge and experience." *Coyler v. State,* 428 S.W.3d 117, 125 (Tex. Crim. App. 2014). According to the Court,

> The purpose of Rule 606(b) is to limit 'the role jurors may play in attacking the validity of a verdict.' This limitation serves four important policy interests: It encourages jurors to candidly discuss the case, protects jurors from post-trial harassment, promotes finality, and prevents tampering and fraud.

(*Id.* at 123-24).[196]

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[196]Nothing about the inquiry into demonstrations and experiments conducted in the jury room without the benefit of confrontation affects encouraging candid discussions during deliberations. *See McQuarrie v. State, supra:* "[a]n inquiry into the *effects* of the jury's private internet investigation (or demonstrations and experiments) does not require [the Court] to 'delve into deliberations.'....[A] trial court should be able to inquire as to whether jurors received such outside information (or engaged in demonstrations and experiments) and the impact it had on their verdict without delving into their actual deliberations." (*Id.* at 154).

But *Coyler* did not deal with jury *demonstrations and experiments with objects not admitted into evidence.* Rather, the issue before the Court there was whether it was permissible to allow a juror to testify about why he ultimately reached his verdict and the "pressures" he experienced due to the "late time of the day, the distance to the parking lot, the approaching inclement weather, and the amount of time it was taking to respond to the jury's notes." (*Id.* at 120-121.) The Court determined that these matters did not qualify as outside influences. (*Id.* at 127-128).

The evidence in this case was incredibly weak, circumstantial and legally insufficient. Although the defendant has no burden to establish harm, *McGowen v. State*, 25 S.W.3d 741, 744 (Tex. App.–Houston [14th Dist.] 2000, en banc), this resulted in substantial harm. Moreover, when there is a finding that error "had more than a slight influence," on the jury's verdict, an appellate court must conclude that the error was such as to require a new trial." *McGowen*, *supra*, interpreting TEX. R. APP. P. 44.2(b) and relying on, *O'Neal v. McAninch*, 513 U.S. 432, 435-438, 115 S.Ct. 992, 130 L.Ed.2d 947 (1995). In any event, in conducting a harmless error review, appellate courts must "view the evidence in a neutral, impartial, and even-handed fashion, ***not in the light most favorable to conviction***." *Joseph v. State*, 960 S.W.2d 363, 367 (Tex. App.-Houston [1st Dist.] 1998). (Emphasis added).

Reversible error is presented.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, for the foregoing reasons, appellant respectfully prays that this Honorable Court reverse the conviction and enter a judgment of acquittal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that Appellant's computer-generated Brief contains 57,447 words (relying on the word count of the computer program) and is *not* in compliance with Rule 9.4(i)(2)(B) of the Texas Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief for Appellant has been delivered by email to Clinton Morgan, Assistant District Attorney, morgan_clinton@dao.hctx.net, on this 19th day of February, 2019.

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